

# Exhibit B

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

DALE MOOG, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

THE CHRISTIAN BROADCASTING  
NETWORK, INC.,

Defendant.

Case No. 1:24-cv-00501-PTG-IDD

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**PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

Plaintiff Dale Moog (“Plaintiff”), by and through undersigned counsel and pursuant to the Class Action Settlement Agreement dated November 8, 2024 and filed herewith (the “Settlement Agreement”),<sup>1</sup> and the exhibits attached thereto, moves this Court for preliminary approval of the proposed settlement (the “Settlement”) of this action (the “Action”). More specifically, Plaintiff respectfully requests that this Court enter an order, substantially in the form of the proposed order attached as Exhibit A to the Settlement Agreement, (1) finding it will likely (a) approve the Settlement and (b) certify the Settlement Class for purposes of judgment on the proposed Settlement; (2) appointing Plaintiff as Class Representative for the Settlement Class; (3) appointing Bailey Glasser LLP and Carney Bates & Pulliam PLLC as Class Counsel; (4) approving the form and manner of notice and directing notice to the Settlement Class; and (5) scheduling a

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<sup>1</sup> Unless otherwise indicated, capitalized terms herein refer to and have the same meaning as in the Settlement Agreement.

hearing before the Court to determine whether the Settlement should be finally approved and to consider Plaintiff's request for attorneys' fees, litigation expenses, and a Service Award.

Dated: November 8, 2024

Respectfully submitted,

/s/ Nicholas Johnson

Nicholas Johnson (#76027)  
James Kauffman (admitted pro hac vice)  
BAILEY GLASSER LLP  
1055 Thomas Jefferson Street NW, Ste 540  
Washington, DC 20007  
Tel: (202) 463-2101  
Fax : (202) 463-2103  
Email: njohnson@baileyglasser.com  
Email: jkauffman@baileyglasser.com

Allen Carney (admitted pro hac vice)  
Sam Jackson (admitted pro hac vice)  
CARNEY BATES & PULLIAM, PLLC  
1 Allied Drive, Ste 1400  
Little Rock, AR 72202  
Telephone : (501) 312-8500  
Facsimile : (501-312-8505  
Email : acarney@cbplaw.com  
Email: sjackson@cbplaw.com

Counsel for Plaintiff Dale Moog  
and the Proposed Settlement Class

**UNITED STATES DISTRICT COURT  
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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT<sup>1</sup>**

**I. INTRODUCTION**

Plaintiff Dale Moog (“Plaintiff”), on behalf of himself and the members of the Settlement Class (defined below), and Defendant The Christian Broadcasting Network, Inc. (“CBN” or “Defendant,” and collectively together with the Plaintiff, the “Parties”) have reached a proposed Settlement in this Action. The Settlement will fully resolve this litigation (the “Action”), wherein Plaintiff alleges CBN violated the Video Privacy Protection Act, 18 U.S.C. § 2710 (“VPPA”), by installing and running the Meta Pixel on its website, thereby disclosing consumers’ personally identifiable information, which the VPPA defines as including information that identifies a person as having requested or obtained specific video materials or services from a video tape service provider. Under the proposed Settlement, CBN will create a \$4,000,000.00 non-reversionary cash fund (the “Settlement Fund”) for the benefit of the Settlement Class. CBN also has agreed to

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<sup>1</sup>While the Motion for Preliminary Approval is unopposed by Defendant, this memorandum is being offered by Plaintiff only, and for purposes of the settlement, Defendant currently takes no position on the factual statement and/or legal arguments made herein.

suspend operation of the Pixel on any pages of its websites relevant to VPPA compliance—i.e., webpages that both include video content and have a URL that identifies the video content viewed.

The Settlement presented for the Court’s consideration is fair, reasonable, and adequate and warrants preliminary approval. Plaintiff and his counsel have vigorously prosecuted this Action on behalf of the Settlement Class and—through extensive, arm’s-length negotiations overseen by experienced mediator Hon. F. Bradford Stillman (Ret.)—have developed an understanding of the strengths and weaknesses of the Action. Notwithstanding his confidence in the merits of his VPPA claim, Plaintiff recognizes the challenges and risks inherent in proceeding through litigation and proving his claims at trial. The challenges and risks include certification of any class, CBN’s defenses to liability, including but not limited to those arising under the statutory text and Plaintiff’s consent to Facebook’s terms of use and service, as well as any other defenses to any recovery of damages, and other affirmative defenses. The Settlement avoids those risks and provides immediate, meaningful, and robust monetary and injunctive relief to all members of the Settlement Class. After deduction of Court-awarded fees, expenses, service award, and administrative costs, Settlement Class Members who submit valid claims through a very simple claims process will each receive a pro rata share of the Net Settlement Fund.<sup>2</sup> Defendant denies all wrongdoing and any liability whatsoever, including the material allegations in the Amended Complaint. However, wishing to avoid the costs, expenses, and risks of litigation, Defendant similarly seeks to resolve the claims and limit further potential liability.

For the reasons set forth herein, Plaintiff respectfully requests that the Court: (1) find it will likely (a) approve the Settlement and (b) certify the Settlement Class for purposes of judgment on

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<sup>2</sup> Unless otherwise indicated, capitalized terms herein refer to and have the same meaning as in the Settlement Agreement.

the proposed Settlement; (2) appoint Plaintiff as Class Representative for the Settlement Class; (3) appoint Bailey Glasser LLP and Carney Bates & Pulliam PLLC as Class Counsel; (4) approve the form and manner of notice and direct notice to the Settlement Class; and (5) schedule a hearing before the Court to determine whether the Settlement should be finally approved and to consider Plaintiff's request for attorneys' fees, litigation expenses, and a Service Award.

## **II. BACKGROUND**

### **A. Overview of the Litigation**

On March 28, 2024, Tyler Stricker filed a putative class action complaint against CBN in the United States District Court for the Eastern District of Virginia alleging violations of the Video Privacy Protection Act, 18 U.S.C. § 2710 *et seq.* ECF No. 1. On April 17, 2024, Plaintiff filed an Amended Class Action Complaint (the "Amended Complaint") and changed the named plaintiff to Dale Moog. ECF No. 3. The material allegations of the Amended Complaint center on Defendant's alleged knowing disclosure of the Plaintiff's and Settlement Class Members' personally identifiable information ("PII"), as defined under the VPPA, to Meta Platforms, Inc. (formerly known as Facebook) ("Meta") without Plaintiff's and Settlement Class Members' informed, written consent by installing the Meta Pixel on its websites. Defendant denies these allegations.

On June 28, 2024, the Parties filed a Joint Motion for a Temporary Stay Pending Mediation, jointly requesting a stay of all pending deadlines for ninety (90) days, or until September 30, 2024, to allow the Parties to engage in a private mediation. ECF No. 8. On July 1, 2024, this Court granted the Parties' motion, entering a temporary stay pending mediation and vacating all deadlines. ECF No. 13. The Parties engaged in substantial, targeted pre-mediation discovery related to the Settlement Class Members and the alleged disclosure of Class Members' PII.

On September 10, 2024, the Parties attended an all-day mediation with the Honorable F. Bradford Stillman (Ret.). This mediation resulted in a settlement in principle, the terms of which are reflected in the Settlement Agreement submitted herewith and summarized below. Prior to the mediation, the Parties exchanged informal discovery regarding the merits of the case and class certification under Fed. R. Civ. P. 23 and Fed. R. Evid. 408.

## **B. The Proposed Settlement**

### **1. The Settlement Class**

The Settlement Agreement defines the Settlement Class as follows:

All persons in the United States who: (1) possessed and used login credentials for any of CBN's websites, and (2) requested or obtained video content from and/or through any of CBN's Services during the Class Period.<sup>3</sup>

Settlement Agreement ¶ 1.33. The Settlement Class specifically excludes: (1) any persons who have asserted claims against CBN under the VPPA prior to the date of this settlement through counsel other than Class Counsel; (2) any Judge or Magistrate Judge presiding over this Action and members of their families; (3) the Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, and attorneys; (4) persons who properly execute and file a timely request for exclusion from the Settlement Class; and (5) the legal representatives, successors or assigns of any such excluded persons. *Id.*

The Settlement Class modifies the class definition alleged in Plaintiff's Amended Complaint, which defined the putative class as "all persons in the United States who requested or obtained audio visual material through their login with Defendant's Websites, and had a Facebook

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<sup>3</sup> The Class Period is defined in the Settlement Agreement to mean the period from March 28, 2022 to and through May 28, 2024. *See* Settlement Agreement at ¶ 1.5.

Profile during the period any of the Pixels were active on Defendant’s Websites.” *See* ECF No. 3 ¶ 46. The modified Settlement Class includes approximately 207,000 individuals that were identified by CBN, through a review of its records, as having logged in to a CBN website and requested or obtained video content during the Class Period (*i.e.*, March 22, 2022 to and through May 28, 2024), and whose personal information may have been shared with third parties – including both Facebook and others -- via cookies. The Settlement benefits provided for in the Settlement and described below are based on the modified class definition and provide for a pro rata distribution to the Settlement Class Members. Further, under the Settlement, should the Settlement Class size increase by more than 10%, the Settlement Amount shall increase pro rata for each Settlement Class Member above 207,000. *See id.* ¶ 1.32.

## 2. Monetary Relief

CBN has agreed to pay \$4,000,000.00 to create a non-reversionary Settlement Fund for the benefit of Settlement Class Members. Settlement Agreement ¶¶ 1.32, 1.35, and 2.1. Settlement Class Members who submit valid claims will receive a pro rata payment after the deduction of settlement-related costs, including Settlement Administration Expenses, any court-awarded attorneys’ fees and expenses, and any court-awarded Service Award. *Id.* ¶¶ 1.28, 1.30, and 2.1.

## 3. Business Practice Changes

CBN also has agreed to implement meaningful business practice changes designed to address the alleged VPPA violations going forward. Within 45 days of the entry of Final Judgment, CBN will suspend operation of the Meta Pixel on any pages on its website that both include video content and have a URL that identifies the video content requested or obtained, unless and until the same is authorized or permitted by law, and/or the VPPA is: (a) amended to expressly permit (and not prohibit) the Released Claims, (b) repealed, or (c) invalidated by a judicial decision on



the use of website pixel technology by the United States Supreme Court or the Fourth Circuit Court of Appeals. Nothing about this provision prevents CBN from seeking to obtain VPPA-compliant consent in the future should it wish to reinstitute use of the Meta Pixel. Likewise, nothing herein shall prohibit the use by CBN of the Meta Pixel where the disclosure of information does not identify specific video materials that a user has requested or obtained, or to engage in the use of other technology that does not violate the VPPA, or has been consented to by the user. Nothing about this provision prevents CBN from seeking to obtain VPPA-compliant consent in the future should it wish to reinstitute use of the Meta Pixel. *Id.* ¶ 2.5.

#### 4. Release

In exchange for the relief described above, Plaintiff and the Settlement Class shall release all claims that have or could have been asserted against CBN, relating to the facts, transactions, or events alleged in this Action. *See id.* ¶ 1.25 (Released Claims), ¶ 1.26 (Released Parties), and ¶¶ 4.1– 4.2 (Release).

#### 5. Notice

The proposed notice plan (the “Notice Plan”) was designed to provide the “best notice practicable” to Settlement Class Members, and as such, satisfies Rule 23 of the Federal Rules of Civil Procedure and due process. The Notice Plan includes dissemination of individual notice by email to all Settlement Class Members for whom a valid email address is available in the Class List. *Id.* ¶ 5.1.2. If deemed necessary by Class Counsel and Defendant’s Counsel in consultation with the Settlement Administrator or otherwise directed by this Court, the Parties agree to discuss additional notice and/or means of notice, including, but not limited to, sending a reminder Notice via email, substantially in the form attached as Exhibit B to the Settlement Agreement (with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice), to

all Settlement Class Members for whom a valid email address is available in the Class List. *Id.* ¶ 5.1.3. Additionally, Notice shall be provided on a case-specific settlement website that will include the ability to file Claim Forms online, and a toll-free telephone line with an interactive voice response (“IVR”) system will be established to provide Settlement Class Members with responses to frequently asked questions and provide essential information regarding the Action. *Id.* ¶¶ 5.1.4-5.1.5.

6. Attorneys’ Fees, Litigation Expenses, and a Service Award

Class Counsel may separately move for an award of attorneys’ fees of up to one-third of the Settlement Fund and reimbursement of litigation expenses. Class Counsel may also request a service award of up to \$5,000 for the Settlement Class Representative. *Id.* ¶¶ 6.1-6.5.

**III. ARGUMENT**

In the Fourth Circuit, “[t]here is a strong judicial policy in favor of settlements, particularly in the class action context.” *Scott v. Fam. Dollar Stores, Inc.*, No. 308CV00540MOCDCS, 2018 WL 1321048, at \*3 (W.D.N.C. Mar. 14, 2018); *see also Robinson v. Carolina First Bank NA*, No. 7:18-cv-02927-JDA, 2019 WL 719031, at \*8 (D.S.C. Feb. 14, 2019) (“There is a strong judicial policy in favor of settlement to conserve scarce resources that would otherwise be devoted to protracted litigation.”) (citing *In re Jiffy Lube Securities Litig.*, 927 F.2d 155, 158-59 (4th Cir. 1991)); *Haney v. Genworth Life Ins. Co.*, No. 3:22CV55, 2023 WL 2213420, at \*2 (E.D. Va. Jan. 6, 2023).

Federal Rule of Civil Procedure 23(e) requires court approval of a proposed class action settlement upon a finding that the settlement is “fair, reasonable, and adequate.” *See Fed. R. Civ. P. 23(e)(2)*. Under the December 1, 2018 amendments to Rule 23(e), the preliminary approval process requires the Court to assess whether the parties have shown that “the court will likely be

able to: (i) approve the proposal under Rule 23(e)(2), and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B)(i)-(ii). Specifically, Rule 23(e) requires courts to ensure that a class settlement is “fair, reasonable, and adequate” in light of the following factors:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
  - (i) the costs, risks, and delay of trial and appeal;
  - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
  - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
  - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

In addition to the foregoing, the Fourth Circuit “has developed multifactor standards for assessing whether a class-action settlement is ‘fair, reasonable, and adequate’ under Rule 23(e)(2).” *In re Aqueous Film-Forming Foams Prod. Liab. Litig.*, No. 2:18-MN-2873-RMG, 2024 WL 1341122, at \*9 (D.S.C. Mar. 29, 2024). When determining the fairness of a settlement, the Fourth Circuit has specified the following criteria: “(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel.” *Id.*; *Jiffy Lube Securities Litig.*, 927 F.2d at 158-59 (same). Similarly, the Fourth Circuit has articulated the following factors when determining the adequacy of a settlement: “(1) the relative strength of the plaintiffs’ case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5)

the degree of opposition to the settlement.” *Id.*; *In re Jiffy Lube*, 927 F.2d at 158-59. These factors overlap with Rule 23(e)’s consideration.

As outlined below, preliminary approval of the Settlement is warranted. First, the Court will likely be able to finally approve the proposed Settlement—calling for substantial monetary relief and business practice changes—as fundamentally fair, reasonable, and adequate. Second, the Court will likely be able to certify the Settlement Class at the final approval stage pursuant to Rule 23(a) and (b)(3). Accordingly, the Court should grant Plaintiff’s motion for preliminary approval of the Settlement and direct notice to the Settlement Class.

**A. The Settlement Is Procedurally Fair.**

The procedural fairness analysis under *Jiffy Lube* is intended to confirm that a settlement was “reached as a result of good-faith bargaining at arm’s length, without collusion.” 927 F.2d at 158-59; *Haney*, 2023 WL 2596845, at \*1 (same). This is consistent with the Rule 23(e)(2)(A)-(B) considerations of the adequacy of the representation of the class and whether the settlement was negotiated at arm’s length. *Haney*, 2023 WL 2596845, at \*1. Consideration of these factors weighs in favor of a preliminary finding that the Settlement is procedurally fair.

1. **The Settlement Class Was Adequately Represented.**

“[T]he adequacy requirement is met when: (1) the named plaintiff does not have interests antagonistic to those of the class; and (2) plaintiff’s attorneys are qualified, experienced, and generally able to conduct the litigation.” *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 567 (E.D. Va. 2016) (citation omitted).

Here, Plaintiff’s interests are aligned with the interests of Settlement Class Members as, during the Class Period, each possessed and used login credentials for CBN’s websites(s), each viewed video content through CBN’s Services, and each suffered the same alleged injury (the

improper disclosure of personally identifiable information without consent) and have the same interest in securing remedial and injunctive relief resulting in the cessation of the collection and possession of their personally identifiable information. Moreover, the monetary and remedial relief achieved in Settlement applies equally and uniformly to benefit all members of the Settlement Class. Thus, there is no conflict between Plaintiff and the members of the Settlement Class.

By similar token, Class Counsel have vigorously and adequately represented the Settlement Class. Class Counsel are highly qualified, have extensive experience and knowledge in prosecuting similar consumer class actions, particularly those involving privacy violations, including those under the VPPA. Joint Declaration of Allen Carney and James L. Kauffman (“Joint Decl. of Class Counsel”) at ¶¶ 3-6 and Exs. A and B (submitted herewith). Moreover, Class Counsel performed significant work in identifying, litigating, and negotiating the settlement of the claims in this Action, including engaging in extensive factual investigation; drafting the initial and amended complaints; engaging in informal discovery regarding the merits of Plaintiff’s claim and class certification; and participating in a full-day mediation. *Id.* at ¶¶ 8-9, 21-23, 27. Accordingly, this factor weighs in favor of preliminary approval. *See In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Practices & Prod. Liab. Litig.*, 952 F.3d 471, 485 (4th Cir. 2020) (finding counsel’s experience in complex civil litigation supported fairness of settlement).

2. The Proposed Settlement Was Negotiated at Arm’s Length with the Assistance of an Experienced Mediator After the Exchange of Informal Discovery.

Under *Jiffy Lube*, considering the posture of the case, the extent of discovery, and the circumstances surrounding the negotiations “allows the Court to determine whether the case has progressed far enough to dispel any wariness of possible collusion among the settling parties.”

*Brown*, 318 F.R.D. at 571 (E.D. Va. 2016) (citation and internal quotation marks omitted). It also “enables the Court to ensure that the case is well-enough developed for Class Counsel and . . . Plaintiffs alike to appreciate the full landscape of their case when agreeing to enter into th[e] Settlement.” *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 254 (E.D. Va. 2009). These factors overlap with Rule 23(e)(2)(B)’s consideration of whether the settlement was negotiated at arm’s length. *See Donaldson v. Primary Residential Mortg., Inc.*, No. CV ELH-19-1175, 2021 WL 2187013, at \*5 (D. Md. May 28, 2021). Under these criteria, the assistance of an experienced, neutral mediator weighs in favor of the reasonableness of the settlement. *See Lewis v. Precision Concepts Grp. LLC*, No. 1:18CV64, 2021 WL 7185505, at \*3 (M.D.N.C. Mar. 23, 2021) (finding the participation of a neutral mediator supported a finding of the settlement being procedurally fair).

Here, the Court can safely conclude this Settlement was negotiated at arm’s length, without collusion, based on the terms of the Settlement itself; the adversarial nature of the negotiations; and the involvement of an experienced mediator. *See In re NeuStar, Inc. Sec. Litig.*, No. 1:14–CV–885(JCC/TRJ), 2015 WL 5674798, at \*10 (E.D. Va. Sept. 23, 2015) (adversarial encounters support a finding of arms’ length negotiations). The Parties engaged in a private mediation before the Honorable F. Bradford Stillman (Ret.), an experienced mediator, to assist them in reaching the proposed Settlement. They prepared and reviewed detailed mediation statements and other supporting materials before participating in a day-long mediation. Even after reaching an agreement-in-principle, the Parties engaged in additional negotiations over the next several weeks to finalize the terms and conditions of the Settlement Agreement and the exhibits attached thereto. These efforts were unquestionably at arms-length and non-collusive. Moreover, the Settlement itself bears no indicia of collusion as attorneys’ fees were negotiated separately after relief to the

class was determined, there is no “clear sailing” provision, and under no circumstances will any amount of the Settlement Fund revert to CBN. Joint Decl. of Class Counsel at ¶¶ 12, 26; *see also* Settlement Agreement ¶¶ 2.4, 6.1-6.5.

Further, although formal discovery did not take place, the Parties informally exchanged information prior to and during the mediation. That information included data bearing on the merits of Plaintiff’s claims and the size of the class. *See* Joint Decl. of Class Counsel at ¶¶ 7-8, 15, 21. Thus, during negotiations, Class Counsel—attorneys with considerable experience in assessing the strengths and weaknesses of VPPA cases—were well-informed about the strengths and risks of Plaintiff’s claims, as well as their value. Further, the Parties exchanged sufficient information over the course of the mediation process to ensure that both sides were making an informed decision regarding the adequacy of the Settlement. *Id.*

Accordingly, this factor also supports a finding that the Court will likely be able to finally approve the Settlement and weighs in favor of preliminary approval.

**B. The Settlement Is Substantively Fair, Reasonable, and Adequate.**

The relief offered to Settlement Class Members in the proposed Settlement is more than adequate under the factors outlined in Rule 23(e)(2)(C)-(D) and *Jiffy Lube*.

This is a complex class action that has been and would continue to be very costly to litigate through trial. *See* Joint Decl. of Class Counsel at ¶¶ 8, 22. Had litigation continued, the Parties would likely have retained expensive forensics and other experts for class certification, summary judgment, and trial, resulting, at minimum, in protracted Daubert briefing. By reaching a favorable settlement with the assistance of a neutral mediator, the Parties avoided even more significant expense and delay.

Further, Plaintiff would face significant risks in establishing liability and damages if this Action were to proceed. Litigation inherently involves risks and uncertainty. *See Ciarciello v. Bioventus Inc.*, No. 1:23-CV-32, 2024 WL 3802990, at \*1 (M.D.N.C. Aug. 13, 2024); *In re Facebook, Inc. Consumer Priv. User Profile Litig.*, No. 3:18-MD-02843-VC, 2023 WL 8443230, at \*3 (N.D. Cal. Oct. 10, 2023) (discussing due-process concerns raised by statutory damages in the VPPA context). Though Plaintiff believes in the merits of his case, settlement here avoids this significant uncertainty while ending the challenged conduct and securing immediate monetary benefits.

Additionally, the risk of maintaining class status through trial in this Action is significant. The Court has not yet certified the case as a class action. Such a determination would only be reached after additional first- and third-party discovery, and exhaustive briefing. If the Court were to determine that statutory damages could not be imposed on a classwide basis, there is a risk that individualized damages determinations would overwhelm the common issues. And, even if the Court were to certify the Class (and deny efforts to decertify it thereafter), CBN would likely seek appellate review of this Court's interlocutory decisions, adding further delay. *See Robinson v. Nationstar Mortg. LLC*, No. 8:14-CV-03667-TJS, 2020 WL 8256177, at \*4 (D. Md. Dec. 11, 2020), *aff'd sub nom. McAdams v. Robinson*, 26 F.4th 149 (4th Cir. 2022) (approving settlement as fair, reasonable, and adequate after consideration of risk of not maintaining class action status throughout trial).

The Settlement Agreement eliminates these risks while providing significant relief to the Settlement Class. Under the Settlement, approved claimants will receive a pro rata distribution of the \$4,000,000.00 Settlement Fund after the deduction of notice and administration costs, any court-awarded attorneys' fees and expenses, and any court-awarded Service Award. There is no



preferential treatment for any members of the Settlement Class. In addition to monetary relief, the Settlement also includes valuable remedial relief—namely, that CBN will suspend operation of the Meta Pixel on any pages on its website that both include video content and have a URL that identifies the video content requested or obtained, unless and until the same is authorized or permitted by law, and/or the VPPA is: (a) amended to expressly permit (and not prohibit) the Released Claims, (b) repealed, or (c) invalidated by a judicial decision on the use of website pixel technology by the United States Supreme Court or the Fourth Circuit Court of Appeals. Nothing about this provision prevents CBN from seeking to obtain VPPA-compliant consent in the future should it wish to reinstitute use of the Meta Pixel. Likewise, nothing herein shall prohibit the use by CBN of the Meta Pixel where the disclosure of information does not identify specific video materials that a user has requested or obtained, or to engage in the use of other technology that does not violate the VPPA, or has been consented to by the user. This is the same injunctive relief Plaintiff would have sought through trial. Class Counsel believe this is an exceptional result for the Settlement Class. *Luna v. Yummy, LLC*, No. 8:23-CV-01784-AAQ, 2024 WL 3554969, at \*3 (D. Md. July 26, 2024) (“Counsel’s opinion that the expense and potential duration of litigation weigh in favor of early settlement lends credence to a proposed settlement agreement.”).

Under the Settlement, if Plaintiff’s counsel are appointed Class Counsel, they will apply for attorneys’ fees not to exceed one-third of the Settlement Fund plus reimbursement of reasonable litigation expenses. The Parties addressed the issue of attorneys’ fees and expenses only after they had reached an agreement in principle with respect to the substantive terms of the Settlement, including the proposed monetary and injunctive relief. The Settlement Agreement is in no way contingent upon the Court’s award of attorneys’ fees and costs.

Accordingly, these factors sharply weigh in favor of preliminary approval.

**C. The Court Will Be Able to Certify the Proposed Settlement Class.**

Rule 23(e)(1) provides that preliminary approval should be granted (and notice disseminated) where the Court “will likely be able to” certify the class under Rule 23(a) and (b) for purposes of judgment on the proposed settlement. Fed. R. Civ. P. 23(e). Rule 23(a) provides:

(a) Prerequisites to Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Additionally, Rule 23(b) provides, in relevant part:

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. .

..

As set forth below, all the requirements of Rule 23(a) and (b) are met in this Action, justifying preliminary certification of the proposed Settlement Class for settlement purposes only.

1. The Settlement Class Is Sufficiently Numerous.

Rule 23(a)(1) is satisfied where “the class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “No specified number is needed to maintain a class action.” *Branch v. Gov’t Employees Ins. Co.*, 323 F.R.D. 539, 546 (E.D. Va. 2018) (finding a class of 400 to be sufficiently numerous); William B. Rubenstein, 1 Newberg on Class Actions, § 3:12 (generally a class of more than 40 satisfies the numerosity requirement) (5th ed. 2018).

Here, there can be no doubt that the Settlement Class is sufficiently numerous. According to the data provided by CBN, there are approximately 200,000 potential Settlement Class Members geographically dispersed throughout the country who possessed and used a login during the time

period at issue to view videos on a CBN website. *See* Joint Decl. of Class Counsel at ¶ 15; *see also* Settlement Agreement ¶ 1.32. Joinder is therefore impracticable and Rule 23(a)(1) is satisfied.

2. There Are Common Questions of Law and Fact.

Rule 23(a)(2) requires that there be “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). “Although the rule speaks in terms of common questions, what matters to class certification . . . [is] the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation.” *EQT Prod. Co. v. Adair*, 764 F.3d 347, 360 (4th Cir. 2014) (internal quotation marks omitted). “Minor factual variances do not prevent a plaintiff from showing commonality as long as the claims arise from the same set of facts and the putative class members rely on the same legal theory.” *Branch*, 323 F.R.D. at 546 (internal quotation marks omitted).

This Action presents numerous common questions of both law and fact that can be resolved on a classwide basis. Common questions include but are not limited to: (i) whether CBN knowingly disclosed Plaintiff’s and Settlement Class Members’ personally identifiable information; and (2) whether CBN’s conduct violates the VPPA. Accordingly, Rule 23(a)(2) is satisfied.

3. Plaintiff’s Claims Are Typical of the Settlement Class.

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Typicality requires that “a class representative must be part of the class and possess the same interest and suffer the same injury as the class members.” *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006); *see also* Newburg on Class Actions, at § 3:29 (“The test for typicality is not demanding and focuses on the similarity between the named plaintiffs’ legal and remedial theories and the theories of those whom

they purport to represent.”) (citation and internal quotation marks omitted). Thus, the “plaintiff’s claim cannot be so different from the claims of absent class members that their claims will not be advanced by plaintiff’s proof of his own individual claim.” *Deiter*, 436 F.3d at 466-67. Typicality does not require “that the plaintiff’s claim and the claims of class members be perfectly identical or perfectly aligned.” *Id.* at 467.

Here, CBN engaged in the same conduct, which Plaintiff alleges violates the VPPA, as to the Plaintiff and all potential Settlement Class Members. Thus, Plaintiff’s claim arises from the same set of facts and the same theory of liability as the claims of the potential Settlement Class Members. Rule 23(a)(3) is therefore satisfied.

4. Plaintiff Will Fairly and Adequately Protect the Interests of the Settlement Class.

Rule 23(a)(4) requires that the “representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Similarly, Rule 23(g)(4) requires that “class counsel [will] fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(4). Adequacy is satisfied “if the named plaintiff does not have interests antagonistic to those of the class[,] and . . . plaintiff’s attorneys are qualified, experienced, and generally able to conduct the litigation.” *Branch*, 323 F.R.D. at 549 (alteration in original) (internal quotation marks omitted).

The interests of Plaintiff and Class Counsel are not antagonistic to the Settlement Class. Plaintiff and the potential Settlement Class Members all (1) had and used logins to CBN’s Services, and (2) requested or obtained video content on a website operated by CBN during the relevant time period. Therefore, Plaintiff’s interests are in line with those of all potential Settlement Class Members, and there are no other cognizable, conflicting interests. Thus, Plaintiff will fairly and adequately protect Settlement Class Members’ interests.

Moreover, as noted above and in the Joint Declaration of Class Counsel, Class Counsel have decades of experience in complex, nationwide class actions. *See id.* at ¶¶ 3-6 and Exs. A and B. Indeed, Class Counsel have served as Lead or Co-Lead Counsel in numerous class actions throughout the country, including privacy class actions such as this one. *Id.* Further, Class Counsel have demonstrated they are capable of and committed to achieving the best result for Plaintiff and the Settlement Class and have committed significant resources to the prosecution and settlement of this Action. Thus, Rule 23(a)(4)'s adequacy requirement is satisfied.

5. The Settlement Class Satisfies Rule 23(b)(3).

Rule 23(b)(3) is satisfied when “the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

*a. Common Questions of Law and Fact Predominate.*

“The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). “Critically, Rule 23(b)(3)'s commonality-predominance test is qualitative rather than quantitative.” *Stillmock v. Weis Markets, Inc.*, 385 F. App'x 267, 273 (4th Cir. 2010). “In other words, Rule 23(b)(3) compares the quality of the common questions to those of the noncommon questions.” *Soutter v. Equifax Info. Servs., LLC*, 307 F.R.D. 183, 214 (E.D. Va. 2015) (citation and internal quotation marks omitted). “If the qualitatively overarching issue in the litigation is common, a class may be certified notwithstanding the need to resolve individualized issues.” *Id.*

Courts find predominance satisfied where a single, allegedly unlawful scheme is subject to common proof. *See Chisolm v. TranSouth Fin. Corp.*, 184 F.R.D. 556, 565 (E.D. Va. 1999) (finding common questions of law or fact predominate over any questions affecting only individual members). Here, Plaintiff alleges a common course of conduct whereby CBN knowingly disclosed Class Members' personally identifiable information. This is the "qualitatively overarching issue" in this Action. *Soutter*, 307 F.R.D. at 214; *see also In re TikTok, Inc., Consumer Priv. Litig.*, 617 F. Supp. 3d 904, 926 (N.D. Ill. 2022), *appeal dismissed sub nom. In re TikTok Inc., Consumer Priv. Litig.*, No. 22-2682, 2022 WL 19079999 (7th Cir. Oct. 12, 2022) (finding predominance satisfied where class members alleges that they were all subjected to uniform data- and information-harvesting practices as a result of their use of defendant's app.). Thus, predominance is satisfied.

*b. The Class Action Is Superior to Other Methods of Adjudication.*

The Rule 23(b)(3) superiority test requires that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). "In adding . . . 'superiority' to the qualification-for-certification list, the Advisory Committee sought to cover cases 'in which a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.'" *Amchem*, 521 U.S. at 615 (second ellipsis in original) (citation omitted). "In determining whether the class action mechanism is truly superior the court should consider the class members' interest in individually controlling the prosecution or defense of separate actions; the extent and nature of any litigation concerning the controversy already begun by or against class members; the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and the likely difficulties in managing the class

action.” *Thomas v. FTS USA, LLC*, 312 F.R.D. 407, 425 (E.D. Va. 2016) (internal quotation marks omitted) (quoting Fed. R. Civ. P. 23(b)(3)(A)-(D)).

Applying Rule 23(b)(3) superiority factors to this Action makes clear that the class action mechanism is the superior method of adjudication. There is no indication that any Settlement Class Member wishes to pursue an individual action. To the extent any Settlement Class Member wishes to pursue his or her own individual action, he or she can do so by opting out of the Settlement. *See Thomas*, 312 F.R.D. at 426. Further, concentrating Settlement Class Members’ claims in this forum is desirable because there are approximately 200,000 potential Settlement Class Members who are dispersed throughout the United States. *See* Joint Decl. of Class Counsel at ¶ 15; *see also* Settlement Agreement ¶ 1.32. Furthermore, as explained in *Amchem*, “[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.” *Amchem*, 521 U.S. at 620. Thus, any manageability problems that may have existed in this case are eliminated by the proposed Settlement.

#### **D. The Notice Plan Should Be Approved.**

Before a proposed class settlement may be finally approved, the Court “must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). Where, as here, notice is to be provided to a settlement class certified under Rule 23(b)(3), the Court is required to “direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). As clarified in the December 2018 amendments to Rule 23, the best notice practicable under the circumstances can be accomplished by providing notice through “electronic means” or other appropriate means. *Id.* Here, the proposed form and

manner of Notice satisfy these requirements and otherwise conforms to the standards of Rule 23(c)(2)(B).

Here, the Notice Plan includes direct email notice to all Settlement Class Members via the email address they used to create a login to CBN's Services; the establishment of a Settlement Website where Settlement Class Members can view the Settlement, the Long-Form Notice, and other key case documents; and the establishment of a toll-free number where Settlement Class Members can get additional information. *See* Joint Decl. of Class Counsel at ¶¶ 16-17; *see also* Settlement Agreement at ¶¶ 5.1.2-5.1.7. Moreover, the proposed forms of notice (*see* Settlement Agreement, Exs. B & C) inform potential Settlement Class Members, in clear and concise terms, about the nature of this case, the Settlement, and their rights, including all of the information required by Rule 23(c)(2)(B). In addition, the Claim Form is streamlined, requiring only the minimal information necessary to confirm membership in the Settlement Class and to direct financial payments to Settlement Class Members without requiring the submission of additional documents. *See* Settlement Agreement, Ex. D (Claim Form).

Accordingly, the form and manner of notice proposed here fulfills all of the requirements of Rule 23 and due process.

#### **IV. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Court: (1) find it will likely (a) approve the Settlement and (b) certify the Settlement Class for purposes of judgment on the proposed Settlement; (2) appoint Plaintiff as Class Representative for the Settlement Class; (3) appoint Bailey Glasser LLP and Carney Bates & Pulliam PLLC as Class Counsel; (4) approve the form and manner of notice and direct notice to the Settlement Class; and (5) schedule a hearing



before the Court to determine whether the Settlement should be finally approved and to consider Plaintiff's request for attorneys' fees, litigation expenses, and a Service Award.

Dated: November 8, 2024

Respectfully submitted,

/s/ Nicholas Johnson

Nicholas Johnson (#76027)

James Kauffman (admitted pro hac vice)

BAILEY & GLASSER

1055 Thomas Jefferson Street NW, Ste 540

Washington, DC 20007

Tel: (202) 463-2101

Fax : (202) 453-2103

Email: njohnson@baileyglasser.com

Email: jkauffman@baileyglasser.com

Allen Carney (admitted pro hac vice)

Sam Jackson (admitted pro hac vice)

CARNEY BATES & PULLIAM, PLLC

1 Allied Drive, Ste 1400

Little Rock, AR 72202

Telephone : (501) 312-8500

Facsimile : (501) 312-8505

Email : acarney@cbplaw.com

Email: sjackson@cbplaw.com

Counsel for Plaintiff Dale Moog  
and the Proposed Settlement Class

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

DALE MOOG, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

THE CHRISTIAN BROADCASTING  
NETWORK, INC.,

Defendant.

Case No. 1:24-cv-00501-PTG-IDD

**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among Plaintiff Dale Moog, on behalf of himself and as a representative of the Settlement Class (as defined herein) and Defendant The Christian Broadcasting Network, Inc. (“CBN”) (collectively with the Plaintiff referred to as the “Parties”). Defendant is a non-profit, non-commercial Christian charity dedicated to promulgating the truth of the Bible and the Word of God to the world. This Agreement is intended by the Parties to fully, finally and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

**RECITALS**

1. On March 28, 2024, Tyler Stricker filed a putative class action complaint against CBN in the United States District Court for the Eastern District of Virginia alleging violations of the Video Privacy Protection Act, 18 U.S.C. § 2710 *et seq.* (the “VPPA”). ECF No. 1.
2. On April 17, 2024, Plaintiff filed an Amended Class Action Complaint (the “Amended Complaint”) and changed the named Plaintiff to Dale Moog.
3. The material allegations of the Amended Complaint center on Defendant’s alleged

disclosure of Plaintiff's Facebook ID, which he alleges describes his personally identifiable information ("PII"), as defined under the VPPA, to Meta Platforms, Inc. (formerly known as Facebook) ("Meta") without informed, written consent by installing the Meta Pixel<sup>1</sup> on its websites, which Plaintiff alleges constituted knowing disclosure to a third party as required by the VPPA. Plaintiff further alleges that he created a free login on Defendant's webpage by providing a screen name, creating his personal password for the site and providing his email address. Plaintiff alleges that this free registration constitutes a subscription under the VPPA.

4. Defendant contends that Plaintiff has never revealed his Facebook ID to Defendant, and Defendant did not know and does not know Plaintiff's Facebook ID, or if Plaintiff has a Facebook account or a Facebook ID, or if Plaintiff has allowed Facebook to track his internet activities.

5. On June 28, 2024, the Parties filed a Joint Motion for a Temporary Stay Pending Mediation, jointly requesting a stay of all pending deadlines for ninety (90) days, or until September 30, 2024, to allow the Parties to engage in a private mediation. ECF No. 8.

6. On July 1, 2024, the Court granted the Parties' motion, entering a temporary stay pending mediation and vacating all deadlines. ECF No. 13.

7. On September 10, 2024, the Parties attended an all-day mediation with the Honorable F. Bradford Stillman (Ret.). This mediation resulted in a settlement in principle, the terms of which are reflected in this Settlement Agreement.

8. Prior to the mediation, the Parties exchanged informal discovery regarding the merits of the case and class certification under Fed. R. Civ. P. 23 and Fed. R. Evid. 408.

9. At all times, Defendant has denied and continues to deny any wrongdoing whatsoever and has denied and continues to deny that it committed, or threatened or attempted to

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<sup>1</sup> The "Meta Pixel" is a piece of code that can be embedded in a website to track user interactions such as pages visited, and to report that information back to Meta (formerly known as Facebook).

commit, any wrongful act or violation of law or duty alleged in the Action. Defendant also denies that the putative class should be certified or that the putative class or Plaintiff has suffered any injury or damages. Nonetheless, taking into account the uncertainty and risks inherent in any litigation, Defendant has concluded it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement.

10. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it shall not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of Defendant, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

11. Plaintiff believes that the claims asserted in the Action against Defendant have merit and that he would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiff and Class Counsel recognize that Defendant has raised factual and legal defenses that present a risk that Plaintiff may not prevail. Plaintiff and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendant through class certification, summary judgment, trial, and any subsequent appeals. Plaintiff and Class Counsel have also taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiff believes it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice. Based on their evaluation, Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among

Plaintiff, the Settlement Class, and each of them, and Defendant, by and through undersigned counsel that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

## **AGREEMENT**

### **1. DEFINITIONS**

As used in this Settlement Agreement, the following terms have the meanings specified below.

**1.1. “Action”** means *Moog v. The Christian Broadcasting Network, Inc.*, Case No. 1:24-cv-00501-PTG-IDD, pending in the United States District Court for the Eastern District of Virginia.

**1.2. “Claim Form”** means the document substantially in the form attached hereto as Exhibit D, as approved by the Court. The Claim Form, to be completed by Settlement Class Members who wish to file a claim for a payment, shall be available in electronic and paper format in the manner described below.

**1.3. “Claims Deadline”** means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be set as a date no later than forty-five (45) days after the Notice Date. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

**1.4. “Class Counsel”** means Allen Carney and Sam Jackson of Carney Bates & Pulliam PLLC, and Nicholas Johnson and James Kauffman of Bailey & Glasser, LLP.

**1.5. “Class Period”** means the period from March 28, 2022, to and through the date of May 28, 2024.

**1.6. “Class Representative”** means the named Plaintiff in this Action, Dale Moog.

**1.7. “Court”** means the United States District Court for the Eastern District of Virginia, the Honorable Patricia Tolliver Giles presiding, or any judge who shall succeed her as the judge in this Action.

**1.8. “Defendant”** means The Christian Broadcasting Network, Inc. or CBN.

**1.9. “Defendant’s Counsel”** means Michael W. Jervis and Aarthi Manohar of Mullen Coughlin, LLC, and Benjamin Dill of McAngus Goudelock & Courie.

**1.10. “Effective Date”** means the latest date after which all of the following have occurred: (1) the Parties have executed this Settlement Agreement; (2) the Court has entered a Preliminary Approval Order approving such Settlement Agreement; (3) the Court has entered a Final Judgment approving such Settlement Agreement in all material respects; and (4) the time for filing an appeal from such Final Judgment has expired, or, in the event that there is an appeal from such Final Judgment, all appeals have been exhausted resulting in the entry of a final, non-appealable order approving the Settlement Agreement in all material respects.

**1.11. “Escrow Account”** means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to all Parties at a depository institution insured by the Federal Deposit Insurance Corporation. The Settlement Fund shall be deposited by Defendant into the Escrow Account in accordance with the terms of this Agreement and the money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (i) demand deposit accounts and/or (ii) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund. The Escrow Account shall be maintained by the Settlement Administrator.

**1.12. “Fee Award”** means the amount of attorneys’ fees and reimbursement of expenses

awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

**1.13. “Final”** means, with respect to any judicial ruling or order, that: (1) if no appeal, motion for reconsideration, reargument and/or rehearing, or petition for writ of certiorari has been filed, and the time has expired to file such an appeal, motion, and/or petition; or (2) if an appeal, motion for reconsideration, reargument and/or rehearing, or petition for a writ of certiorari has been filed, the judicial ruling or order has been affirmed with no further right of review, or such appeal, motion, and/or petition has been denied or dismissed with no further right of review. Notwithstanding the above, any order modifying or reversing any attorneys’ fee award or service award made in this case shall not affect whether a judgment of the Court is “Final” as defined herein.

**1.14. “Final Approval Hearing”** means the hearing at or after which the Court shall determine (i) whether to finally approve this Settlement Agreement as fair, reasonable, and adequate, and (ii) whether, and in what amount, to approve Class Counsel’s request for attorneys’ fees and expenses, and a Service Award to the Class Representative.

**1.15. “Final Approval Order and Judgment”** means the order to be entered by the Court, after the Final Approval Hearing, granting final approval of the Settlement Agreement.

**1.16. “Net Settlement Fund”** means the Settlement Fund less the following: Settlement Administration Expenses; any taxes due on earnings on the Settlement Fund, and any expenses related to the payment of such taxes; any Fee Award awarded by the Court; any Service Award awarded by the Court; and any other Court-approved deductions.

**1.17. “Notice”** means the notice of this proposed Settlement Agreement and the Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement, is consistent with the requirements of due process and Federal Rule of Civil Procedure 23, and is substantially in the form of Exhibits B and C hereto

**1.18. “Notice Date”** means the date by which the Notice Program set forth in Paragraph 5 is commenced, which shall be no later than forty-five (45) days after Preliminary Approval.

**1.19. “Objection/Exclusion Deadline”** means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a member of the Settlement Class must be made, which shall be designated as a date no later than forty-five (45) days after the Notice Date and no sooner than fourteen (14) days after papers supporting the Fee Award Application are filed with the Court and posted to the settlement website, or such other date as ordered by the Court.

**1.20. “Order on Attorneys’ Fees”** means an order regarding Class Counsel’s application for an award of reasonable attorneys’ fees and expenses which the Parties will request be entered as a separate judgment pursuant to Federal Rule of Civil Procedure 54(b).

**1.21. “Person”** means, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, and any business or legal entity, and the spouses, heirs, predecessors, successors, representatives, or assigns of the foregoing. “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General office.

**1.22. “Plaintiff”** means Dale Moog.

**1.23. “Preliminary Approval”** means the Court’s preliminary certification of the Settlement Class for settlement purposes only, preliminary approval of this Settlement Agreement, and approval of the form and manner of the Notice.

**1.24. “Preliminary Approval Order”** means the order preliminarily approving the Settlement Agreement, preliminarily certifying the Settlement Class for settlement purposes only, and directing notice thereof to the Settlement Class. The Parties’ proposed form of the Preliminary



Approval Order is to be submitted to the Court for approval in conjunction with Plaintiff's motion for preliminary approval of the Settlement Agreement.

**1.25. "Released Claims"** means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and or obligations (including "Unknown Claims," as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the VPPA or other state, federal, local, statutory or common law against the Released Parties, or any of them, arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding the alleged disclosure of the Settlement Class Members' personally identifiable information and/or video viewing behavior to any third party, including all claims that were brought or could have been brought in the Action relating to the alleged disclosure of the Settlement Class Members' personally identifiable information and/or video viewing behavior to any third party. Nothing herein is intended to release any claims any governmental agency or governmental actor has against Defendant.

**1.26. "Released Parties"** means CBN as well as its respective present or past joint ventures, parent companies, subsidiaries, licensors, licensees, associates, affiliates, employers, and its, or their respective, administrators, employees, agents, consultants, insurers, reinsurers, directors, managing directors, officers, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and any affiliated companies, firms, trusts, and corporations, whether foreign or domestic.

**1.27. "Releasing Parties"** means Plaintiff, those Settlement Class Members who do not

timely opt out of the Settlement Class, and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

**1.28. “Service Award”** means any amount awarded by the Court to the Class Representative as a service award in recognition of his efforts and commitment on behalf of the Settlement Class, which will be paid out of the Settlement Fund.

**1.29. “Services”** means CBN’s or its affiliates’ websites through which individuals, including any Settlement Class Members, requested or obtained audio visual content.

**1.30. “Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in providing Notice (including CAFA notice), processing claims, responding to inquiries from Settlement Class Members, and, if necessary, mailing Notices and/or checks for Approved Claims, and related services.

**1.31. “Settlement Administrator”** means a reputable administration company that has been selected by the Parties and approved by the Court to oversee the distribution of Notice, as well as the processing and payment of Approved Claims to the Settlement Class as set forth in this Agreement.

**1.32. “Settlement Amount”** means four million dollars (\$4,000,000.00) in cash, based on a Settlement Class size of approximately 207,000. Should the Settlement Class size increase by more than 10%, the Settlement Amount shall increase pro rata for each Settlement Class Member above 207,000.

**1.33. “Settlement Class”** means all persons in the United States who: (1) possessed and used login credentials for any of CBN’s websites and (2) requested or obtained video content from and/or through any of CBN’s Services during the Class Period. Excluded from the Settlement Class: are (1) any persons who have asserted claims against CBN under the VPPA prior to the date of this settlement through counsel other than Class Counsel; (2) any Judge or Magistrate presiding over this Action and members of their families; (3) the Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, and attorneys; (4) persons who properly execute and file a timely request for exclusion from the Settlement Class; and (5) the legal representatives, successors or assigns of any such excluded persons.

**1.34. “Settlement Class Member”** means an individual in the Settlement Class as set forth above who has not submitted a valid request for exclusion.

**1.35. “Settlement Fund”** means the non-reversionary cash fund that shall be established by or on behalf of Defendant in the Settlement Amount, to be deposited into the Escrow Account, according to the schedule set forth herein, plus all interest earned thereon. The Settlement Fund shall be at all times a “qualified settlement fund” within the meaning of Section 1.468B-1 et seq. of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund account or otherwise, including any taxes or tax detriments that may be imposed upon the Class Representative, Class Counsel, Defendant, or Defendant’s Counsel with respect to income earned

by the Settlement Fund for any period during which the Settlement Fund does not qualify as a qualified settlement fund for purposes of federal or state income taxes or otherwise, shall be paid out of the Settlement Fund. Neither the Class Representative, Class Counsel, Defendant, nor Defendant's Counsel shall have any liability or responsibility for any taxes arising with respect to the Settlement Fund. The Settlement Fund represents the total extent of Defendant's monetary obligations under this Agreement. With the exception specified in Paragraph 1.32, in no event shall Defendant's total monetary obligation with respect to this Agreement exceed or be less than the Settlement Amount.

**1.36. "Unknown Claims"** means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object or not to object to the Settlement. Upon the Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, the Releasing Parties also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that

it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

## **2. SETTLEMENT RELIEF**

**2.1** Defendant shall pay or cause to be paid into the Escrow Account portions of the Settlement Amount to pay for Settlement Administration Expenses, any court-awarded attorneys' fees and expenses, and any court-awarded Service Award as those become due. Defendant shall pay or cause to be paid into the Escrow Account the remainder of the Settlement Amount within fourteen (14) business days of the Effective Date.

**2.2** Settlement Class Members shall have until the Claims Deadline to submit a claim. The Settlement Administrator shall pay a pro rata portion of the Net Settlement Fund for all approved claims through payment (a) by check via first class U.S. mail; or (b) by electronic means via Venmo, CashApp, Zelle, etc., upon election of the Settlement Class Member, which the Parties agree to make available as alternative payment options. Payments to all Settlement Class Members with approved claims shall be made within ninety (90) days after the Effective Date.

**2.3** All cash payments issued to Settlement Class Members via check will state on the face of the check that it will expire and become null and void unless cashed within one hundred and eighty (180) days after the date of issuance. To the extent that any checks issued to a Settlement Class Member are not cashed within one-hundred eighty (180) days after the date of issuance, such uncashed check funds shall be redistributed on a pro rata basis (after first deducting any necessary Settlement Administration Expenses from such uncashed check funds) to all Settlement Class Members who cashed checks or received electronic payments during the initial distribution, but only to the extent each Settlement Class Member would receive at least \$5.00 in any such secondary distribution and if otherwise feasible. To the extent each Settlement Class Member would receive less than \$5.00 in any such secondary distribution, a secondary distribution would

be otherwise infeasible, or any funds remain unclaimed 120 days following a secondary distribution, such funds shall, subject to Court approval, be distributed to The Salvation Army (USA) for past, current or future Hurricane Relief.

**2.4** Upon payment of the Settlement Fund into the Escrow Account, all risk of loss with respect to the cash portion of the Settlement shall pass to the Escrow Account, and any and all remaining interest or right of Defendant in or to the Escrow Account, if any, shall be extinguished. No part of the Settlement Fund shall revert to CBN.

**2.5** In addition to the foregoing, within 45 days after the entry of Final Judgment, CBN will suspend operation of the Meta Pixel on any pages on its website that both include video content and have a URL that identifies the video content requested or obtained, unless and until the same is authorized or permitted by law, and/or the VPPA is: (a) amended to expressly permit (and not prohibit) the Released Claims, (b) repealed, or (c) invalidated by a judicial decision on the use of website pixel technology by the United States Supreme Court or the Fourth Circuit Court of Appeals. Nothing about this provision prevents CBN from seeking to obtain VPPA-compliant consent in the future should it wish to reinstitute use of the Meta Pixel. Likewise, nothing herein shall prohibit the use by CBN of the Meta Pixel where the disclosure of information does not identify specific video materials that a user has requested or obtained, or to engage in the use of other technology that does not violate the VPPA, or has been consented to by the user.

### **3. SETTLEMENT APPROVAL**

**3.1** The Parties shall cooperate in good faith, and agree, subject to their fiduciary and other legal obligations, to take all reasonably necessary steps to obtain the Court's approval of the terms of this Settlement Agreement.

**3.2** Within fourteen (14) days after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the

Court for Preliminary Approval of the settlement set forth in this Agreement; preliminary certification of the Settlement Class for settlement purposes only; appointment of Class Counsel and the Class Representative; and entry of a Preliminary Approval Order, which order shall set a Final Approval Hearing date and approve the Email Notice, Long Form Notice and Claim Form for dissemination substantially in the form of Exhibits B, C, and D hereto, respectively. The Preliminary Approval Order, to be proposed in the form agreed to by the parties and as attached hereto as Exhibit A, shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class.

**3.3** Defendant's agreement as to certification of the Settlement Class is solely for purposes of effectuating the Settlement and no other purpose. Defendant retains all of its objections, arguments, and defenses with respect to class certification and any other issue, and reserves all rights to contest class certification and any other issue if the Settlement set out in this Agreement does not result in entry of the Final Judgment, if the Court's approval is reversed or vacated on appeal, if this Settlement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective. The Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the Settlement, and that if the Settlement set forth in this Settlement Agreement is not finally approved, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective, this agreement as to certification of the Settlement Class becomes null and void ab initio, and this Settlement Agreement or any other settlement-

related statement may not be cited regarding certification of the Class, or in support of an argument for certifying any class for any purpose related to this Action or any other proceeding.

**3.4** At the time of the submission of this Agreement to the Court as described above, Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the Settlement of the Action as set forth herein.

**3.5** After Notice is given, the Parties shall request and seek to obtain from the Court a Final Judgment, which will (among other things): (i) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all exhibits thereto; (ii) approve the Settlement Agreement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; (iii) find that the Notice implemented pursuant to the Agreement constitutes the best practicable notice under the circumstances, is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, and meets all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court; (iv) find that the Class Representative and Class Counsel adequately represent the Settlement Class for purposes of entering into and implementing the Agreement; (v) dismiss the Action with prejudice, without fees or costs to any party except as provided in the Settlement Agreement; and (vi) enter Final Judgment.

#### **4. RELEASE**

**4.1** The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

**4.2** Upon the Effective Date, and in consideration of the promises and covenants in this Settlement Agreement, the Releasing Parties shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, waived, and discharged all



Released Claims against the Released Parties. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, shall, either directly, indirectly, representatively, or in any capacity, be completely and permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as a class member or otherwise) in any lawsuit, action, or other proceeding in any jurisdiction (other than participation in the Settlement as provided herein) against any Released Party based on the Released Claims.

## **5. NOTICE TO THE SETTLEMENT CLASS**

### **5.1** The Notice Program shall consist of the following:

**5.1.1** Settlement Class List. No later than fourteen (14) days after Preliminary Approval, Defendant shall produce an electronic list from its records that includes the email addresses, to the extent available, belonging to Persons within the Settlement Class (the “Class List”). Defendant represents that the Class List shall identify the email addresses provided to Defendant when the individual obtained login credentials for CBN Services. Class Counsel’s assent to this Agreement shall constitute consent on behalf of the Settlement Class to disclose this information, consistent with the written consent provisions of the VPPA. The Class List shall be provided to the Settlement Administrator with a copy to Class Counsel. Class Counsel shall not use the Class List, or any information contained within it, for any other purposes other than administering the Settlement, and shall take reasonable measures to protect the information from any third-party disclosure.

**5.1.2** Direct Notice. By no later than the Notice Date, the Settlement Administrator shall send Notice via email substantially in the form attached as Exhibit B, along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Class List. In the event transmission of

email notice results in any “bounce-backs,” the Settlement Administrator shall, where reasonable, correct any issues that may have caused the “bounce-back” to occur and make a second attempt to re-send the email notice.

**5.1.3 Additional Notice.** If deemed necessary by Class Counsel and Defendant’s Counsel in consultation with the Settlement Administrator, the Parties agree to discuss additional notice and/or means of notice, including, but not limited to, sending a reminder Notice via email, substantially in the form attached as Exhibit B (with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice), to all Settlement Class Members for whom a valid email address is available in the Class List.

**5.1.4 Settlement Website.** By no later than the Notice Date, Notice shall be provided on a case-specific settlement website that will enable Settlement Class Members to file Claim Forms online. The Notice provided on the Settlement Website shall be substantially in the form of Exhibit C hereto. The Settlement Website shall include at least the following information: (i) a summary of the Action and the settlement terms; (ii) a “Contact Us” page with Settlement Administrator contact information; (iii) the Settlement Agreement, motions for approval and for attorneys’ fees and any other important documents in the case; (iv) important case dates and deadlines, including the Objection/Exclusion Deadline; (v) a summary of Settlement Class Member rights, including how to object to and request exclusion from the Settlement, and how to make a claim; and (vi) the date, time, and location of the Final Approval Hearing.

**5.1.5 Toll-Free Telephone Number.** The Notice Program shall also establish a toll-free telephone line for Settlement Class Members with an interactive voice response (“IVR”) system to provide Settlement Class Members with responses to frequently asked

questions and provide essential information regarding the Action.

**5.1.6** CAFA Notice. Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Agreement is filed with the Court, the Settlement Administrator shall cause to be served upon the Attorneys General of each U.S. State in which Settlement Class members reside, the Attorney General of the United States, and other required government officials, notice of the proposed settlement as required by law.

**5.1.7** The Notice shall advise the Settlement Class of their rights, including the right to be excluded from, comment upon, and/or object to the Settlement Agreement or any of its terms. The Notices shall specify that any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notices, the Person making the objection files notice of an intention to do so and at the same time (a) files copies of such papers he or she proposes to be submitted at the Final Approval Hearing with the Clerk of the Court, or alternatively, if the objection is from a Settlement Class Member represented by counsel, files any objection through the Court's CM/ECF system, and (b) sends copies of such papers by mail, hand, or overnight delivery service to Class Counsel and Defendant's Counsel.

**5.2** Any Settlement Class Member who intends to object to this Agreement must present the objection in writing, which must be postmarked on or before the Objection/Exclusion Deadline. The written objection must also include: (1) the objector's name and address; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or in

any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the “Objecting Attorneys”); (5) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules); (6) the objector’s handwritten or electronically imaged written signature; and (7) a list of all class actions in which the objector has lodged an objection in the last five years. So-called “mass” or “class” objections shall not be allowed.

**5.3** If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received. Any challenge to the Settlement Agreement or the Final Judgment shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

**5.4** A Settlement Class Member may request to be excluded from the Settlement Class by sending a written request postmarked on or before the Objection/Exclusion Deadline. To exercise the right to be excluded, a Person in the Settlement Class must timely send a written request for exclusion to the Settlement Administrator as specified in the Notice, providing his/her name and address, a signature, the name and number of the case, and a statement that he or she wishes to be excluded from the Settlement Class for purposes of this Settlement. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Person(s) serving such a request shall be a Settlement Class Member and shall be bound as a Settlement Class Member by this Agreement, if approved. Any Settlement Class Member who validly elects to be excluded

from this Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion must be personally signed by the Person requesting exclusion. So-called “mass” or “class” opt-outs shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice and approved by the Court.

**5.5** The Final Approval Hearing shall be no earlier than ninety (90) days after the Motion described in Paragraph 3.2 is filed.

**5.6** Any Settlement Class Member who does not, using the procedures set forth in this Agreement and the Notice, seek exclusion from the Settlement Class will be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in the Action and the Releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

## **6. FEE AND SERVICE AWARDS**

**6.1.** Pursuant to Fed. R. Civ. P. 23(h), Defendant agrees that Class Counsel shall be entitled to an award of reasonable attorneys’ fees and costs out of the Settlement Fund in an amount determined by the Court as the Fee Award. Plaintiff will file a motion with the Court prior to the Final Approval Hearing requesting a Fee Award not to exceed one-third of the Settlement Fund.

**6.2.** Payment of the Fee Award shall be made from the Settlement Fund within five (5) days of its funding as set forth in Paragraph 2.1 herein.

**6.3.** Class Counsel may file a motion for Court approval of a Service Award for the Class Representative, to be paid from the Settlement Fund, in addition to any funds the Class Representative stands to otherwise receive from the Settlement. With no consideration having been given or received, Defendant agrees not to object to a request for a Service Award to the Class

Representative of up to \$5,000.00.

**6.4.** The Service Award shall be paid from the Settlement Fund within five (5) days of its funding as set forth in Paragraph 2.1.

**6.5.** The Parties agree that the effectiveness of this Settlement Agreement does not require and is not conditioned upon the Court's approval of a Fee Award and/or a Service Award. No decision by the Court, or modification, reversal, or appeal of any decision by the Court, concerning the payment of a Fee Award and/or a Service Award shall be grounds for cancellation or termination of this Settlement Agreement.

## **7. SETTLEMENT ADMINISTRATOR**

**7.1.** The Parties will obtain bids, which will include a proposed notice plan consistent with the Notice Program set forth in Paragraph 5 herein, from potential settlement administrators with expertise in class action settlement administration. The Parties shall jointly select one settlement administrator from among those who have presented a bid, and in seeking preliminary approval, Plaintiff shall request that the Court appoint the selected entity as the Settlement Administrator. Neither Party shall unreasonably withhold agreement to selection of the Settlement Administrator.

**7.2.** The Settlement Administrator shall be responsible for effectuating the Notice Program consistent with the terms of this Settlement Agreement, as approved by the Court. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with information

concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts from the Settlement Fund paid to Settlement Class Members on account of approved claims.

**7.3.** The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud. The Settlement Administrator will reject any claim that does not comply in any material respect with the instructions on the Claim Form or is submitted after the Claims Deadline. Each claimant who submits an invalid Claim Form to the Settlement Administrator must be given a notice of the Claim Form's deficiency and an opportunity to cure the deficiency within twenty-one (21) days of the date of the notice. The Settlement Administrator may contact any Person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

**7.4.** Defendant's Counsel and Class Counsel shall have the right to challenge the acceptance or rejection of a Claim Form submitted by Settlement Class Members and to obtain and review supporting documentation relating to such Claim Form. The Settlement Administrator shall follow any agreed decisions of Class Counsel and Defendant's Counsel as to the validity of any disputed submitted Claim Form. To the extent Class Counsel and Defendant's Counsel are not able to agree on the disposition of a challenge, the disputed claim shall be submitted to the Court for determination.

**7.5.** In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

## **8. TERMINATION OF THE SETTLEMENT**

**8.1** This Settlement Agreement may be terminated by either Party by serving on counsel for the opposing party and filing with the Court a written notice of termination within ten

(10) days (or such longer time as may be agreed between Class Counsel and Defendant's Counsel) only upon any of the following occurrences: (i) the Court rejects, materially modifies, or materially amends or changes the terms of the Settlement as embodied in this Settlement Agreement, (ii) the Court declines to enter, without material change, the material terms in the proposed Preliminary Approval Order or the proposed Final Approval Order and Judgment; or (iii) an appellate court reverses the Final Approval Order and Judgment, and the Settlement is not reinstated and finally approved without material change by the Court on remand.

**8.2** To avoid ambiguity, the Order on Attorneys' Fees shall not constitute grounds for termination under this Section. In the event of a termination of this Settlement Agreement based on an occurrence specified above, Class Counsel and Defendant's Counsel agree to negotiate in good faith in an attempt to reach an appropriate, amended settlement agreement.

## **9. FAIR, REASONABLE, AND ADEQUATE SETTLEMENT**

**9.1** The Parties believe this Settlement Agreement is a fair, reasonable, and adequate settlement of the Action pursuant to the standards in this Circuit for settlements negotiated prior to class certification, and have arrived at this Settlement Agreement through arm's length negotiations (including mediation conducted by the Hon. F. Bradford Stillman (Ret.)), taking into account all relevant factors, present and potential.

## **10. MISCELLANEOUS PROVISIONS**

**10.1. Real Parties in Interest.** In executing this Settlement Agreement, Plaintiff, on behalf of himself and the Settlement Class, and Class Counsel represent and warrant that, as far as they are aware, Settlement Class Members are the only persons with a legal interest in any of the claims that are described or referred to herein, or in any of the pleadings, records, and papers in the Action, and, except as provided herein, Plaintiff and Class Counsel are unaware of any Released Claims or part thereof having been assigned, granted or transferred in any way to any other person, firm, or entity.



**10.2. Voluntary Agreement.** This Settlement Agreement is executed by the Parties voluntarily and each of the Parties warrants that it or he has executed this Settlement Agreement without being under duress or undue influence from any source.

**10.3. Binding Effect.** This Settlement Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

**10.4. Parties Represented by Counsel.** The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Settlement Agreement by independent counsel of their own choosing, that they have read this Settlement Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Settlement Agreement and of its legal effect.

**10.5. Authorization.** Each Party warrants and represents that there are no liens or claims of lien or assignments, in law or equity or otherwise, of or against any of the Released Claims, and, further, Plaintiff warrants he is fully entitled and duly authorized to release the Released Claims.

**10.6. Amendment.** The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

**10.7. Entire Agreement.** This Agreement contains the entire understanding between Defendant and Plaintiff on behalf of himself and the Settlement Class, regarding the Settlement of the Action, and this Settlement Agreement supersedes all previous negotiations, agreements, commitments, understandings, and writings between Defendant and Plaintiff, including through their respective counsel, in connection with the settlement of the Action.

**10.8. No Admission.** Neither the Settlement Agreement, nor the Settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement

Agreement, including court orders (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, certifiability of a class, or of any wrongdoing or liability of any of the Released Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Parties in any civil or administrative proceeding before any court, administrative agency or other tribunal. However, the Settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final Approval Order and Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

**10.9. Headings.** The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

**10.10. Exhibits.** All of the Exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

**10.11. Construction and Interpretation.** This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arms' length negotiations among the Parties. Because all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

**10.12. Governing Law.** This Settlement Agreement is entered into in accordance with the laws of the Commonwealth of Virginia and shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia, without regard to its conflict of law principles.

**10.13. Further Assurances.** Each Party shall do any and all acts or things reasonably necessary to carry out the express intent of this Settlement Agreement.

**10.14. Continuing Jurisdiction.** The Parties to this Settlement Agreement stipulate that the Court shall retain jurisdiction over the Action after the entry of the Final Approval Order and Judgment to oversee the implementation and enforcement of this Settlement Agreement, the Preliminary Approval Order, the Final Approval Order and Judgment, and the determination of Class Counsel's request for attorneys' fees and litigation expenses, as well as a Service Award, and any award thereon.

**10.15. Notices.** Unless otherwise specifically provided herein, all notices, demands, or other communications between the parties given hereunder shall be in writing and shall be deemed to have been duly given as of the date of electronic mailing. Postal mailing will be provided as well, addressed as follows:

To Class Counsel:

Allen Carney  
CARNEY BATES & PULLIAM, PLLC  
One Allied Dr., Ste. 1400  
Little Rock, AR 72202  
acarney@cbplaw.com

To CBN's Counsel:

Michael W. Jervis  
MULLEN COUGHLIN, LLC  
426 W. Lancaster Ave, Ste. 200  
Devon, PA 19333  
mjervis@mullen.law

**10.16. Costs.** Except as otherwise provided herein, each Party shall bear its own costs.

**10.17. Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents

to form a complete counterpart. Photocopies and .pdf of executed copies of this Settlement Agreement may be treated as originals.

IN WITNESS WHEREOF, each of the signatories has read and understood this Settlement Agreement, has executed it, and represents that he or she is authorized to execute this Settlement Agreement on behalf of the Party or Parties he or she represents, who or which has agreed to be bound by its terms and has entered into this Settlement Agreement.

IT IS SO AGREED TO BY THE PARTIES on this 8th day of November, 2024.



By: \_\_\_\_\_  
Allen Carney (admitted pro hac vice)  
CARNEY BATES & PULLIAM, PLLC  
1 Allied Drive, Ste 1400  
Little Rock, AR 72202  
Telephone: (501) 312-8500  
Facsimile: (501) 312-8505  
Email: [acarney@cbplaw.com](mailto:acarney@cbplaw.com)

By: \_\_\_\_\_  
Michael Jervis (admitted pro hac vice)  
MULLEN COUGHLIN, LLC  
426 W. Lancaster Ave., Ste. 200  
Devon, PA 19333  
Telephone: (267) 930-4498  
Facsimile: (267) 930-4771  
Email: [mjervis@mullen.law](mailto:mjervis@mullen.law)

Counsel for Defendant The Christian  
Broadcasting Network, Inc.

By: \_\_\_\_\_  
Nicholas Johnson (#76027)  
James Kauffman (admitted pro hac vice)  
BAILEY GLASSER LLP  
1055 Thomas Jefferson Street NW, Ste 540  
Washington, DC 20007  
Tel: (202) 463-2101  
Fax : (202) 463-2103  
Email: [njohnson@baileyglasser.com](mailto:njohnson@baileyglasser.com)  
Email: [jkauffman@baileyglasser.com](mailto:jkauffman@baileyglasser.com)

Counsel for Plaintiff Dale Moog and  
the Proposed Settlement Class

to form a complete counterpart. Photocopies and .pdf of executed copies of this Settlement Agreement may be treated as originals.

IN WITNESS WHEREOF, each of the signatories has read and understood this Settlement Agreement, has executed it, and represents that he or she is authorized to execute this Settlement Agreement on behalf of the Party or Parties he or she represents, who or which has agreed to be bound by its terms and has entered into this Settlement Agreement.

IT IS SO AGREED TO BY THE PARTIES on this 8th day of November, 2024.

By: \_\_\_\_\_

Allen Carney (admitted pro hac vice)  
CARNEY BATES & PULLIAM, PLLC  
1 Allied Drive, Ste 1400  
Little Rock, AR 72202  
Telephone: (501) 312-8500  
Facsimile: (501) 312-8505  
Email: [acarney@cbplaw.com](mailto:acarney@cbplaw.com)

By: \_\_\_\_\_



Michael Jervis (admitted pro hac vice)  
MULLEN COUGHLIN, LLC  
426 W. Lancaster Ave., Ste. 200  
Devon, PA 19333  
Telephone: (267) 930-4498  
Facsimile: (267) 930-4771  
Email: [mjervis@mullen.law](mailto:mjervis@mullen.law)

Counsel for Defendant The Christian  
Broadcasting Network, Inc.

By: \_\_\_\_\_



Nicholas Johnson (#76027)  
James Kauffman (admitted pro hac vice)  
BAILEY GLASSER LLP  
1055 Thomas Jefferson Street NW, Ste 540  
Washington, DC 20007  
Tel: (202) 463-2101  
Fax : (202) 463-2103  
Email: [njohnson@baileyglasser.com](mailto:njohnson@baileyglasser.com)  
Email: [jkauffman@baileyglasser.com](mailto:jkauffman@baileyglasser.com)

Counsel for Plaintiff Dale Moog and  
the Proposed Settlement Class

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

DALE MOOG, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

THE CHRISTIAN BROADCASTING  
NETWORK, INC.,

Defendant.

Case No. 1:24-cv-00501-PTG-IDD

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**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This matter is before the Court on Plaintiff’s unopposed Motion for Preliminary Approval of Class Action Settlement (the “Motion”). The Motion attaches and incorporates a Class Action Settlement Agreement (the “Settlement” or “Settlement Agreement”) that, together with the exhibits thereto, sets forth the terms and conditions for the settlement of claims, on a classwide basis, against Defendant The Christian Broadcasting Network, Inc. (“CBN” or “Defendant,” and, along with Plaintiff, the “Parties”).

Having carefully considered the Motion, the Settlement Agreement together with all exhibits and attachments thereto, the record in this matter, and the briefs and arguments of counsel, and the Court determining that it likely will be able to approve the Settlement as fair, reasonable, and adequate under Fed. R. Civ. P. 23(e)(2), that it will likely be able to certify a class for purposes of judgment on the Settlement under Rules 23(a) and (b)(3), and that the proposed plan of notice (the “Notice Program”) to the Settlement Class is the best notice practicable under the circumstances and consistent with the requirements of due process and Federal Rule of Civil Procedure 23(c)(2), and that a hearing should and will be held after notice to the Settlement Class

to confirm that the Settlement is fair, reasonable, and adequate, and to determine whether this Court should enter a judgment approving the Settlement and an order of dismissal of this action based upon the Settlement,

IT IS HEREBY ORDERED as follows:

1. Unless otherwise defined herein, all terms that are capitalized herein shall have the same meaning ascribed to those terms in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter of this action and personal jurisdiction over the Parties and the members of the Settlement Class.

**PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT**

3. The Court finds that, subject to the Final Approval Hearing, the Court will likely be able to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class. The Court further finds that the Settlement substantially fulfills the purposes and objectives of the class action and provides beneficial relief to the Settlement Class, especially considering the risks and delay of continued litigation. The Court also finds that the Settlement Agreement: (a) is the result of arm's-length negotiations involving experienced counsel, with the assistance of mediator the Honorable F. Bradford Stillman (Ret.); (b) is sufficient to warrant notice of the Settlement and the Final Approval Hearing to the Settlement Class; (c) meets all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715; and (d) is not a finding or admission of liability by CBN.

**CERTIFICATION OF THE SETTLEMENT CLASS**

4. Under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and solely for purposes of judgment on the proposed Settlement, the Court preliminarily approves the following Settlement Class:

All persons in the United States who: (1) possessed and used login credentials for any of CBN's websites, and (2) requested or obtained video content from and/or through any of CBN's Services during the Class Period.

5. Excluded from the Settlement Class are (1) any persons who have asserted claims against CBN under the VPPA prior to the date of this settlement through counsel other than Class Counsel; (2) any Judge or Magistrate presiding over this Action and members of their families; (3) the Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, and attorneys; (4) persons who properly execute and file a timely request for exclusion from the Settlement Class; and (5) the legal representatives, successors or assigns of any such excluded persons.

6. All Persons who are members of the Settlement Class who have not submitted a timely request for exclusion are referred to collectively as "Settlement Class Members" or individually as a "Settlement Class Member."

7. For purposes of settlement only, the Court finds that it will likely be able to certify the Settlement Class under Federal Rules of Civil Procedure 23(a) and (b)(3), as the prerequisites thereunder have been met, including (1) that the Settlement Class is so numerous that joinder of all members is impracticable; (2) that there are questions of law and fact common to members of the Settlement Class that predominate over questions affecting only individual members (e.g., whether CBN unlawfully disclosed to third parties Plaintiff's and Settlement Class Members' personally identifiable information without consent in a manner that violated the Video Privacy Protection Act, 18 U.S.C. § 2710, and whether Plaintiff and the Settlement Class Members are entitled to uniform statutory damages under the VPPA); (3) that Plaintiff's claims are typical of the claims of the Settlement Class; that Plaintiff and his counsel will fairly and adequately protect



the interests of the Settlement Class; and (4) that a settlement class action is a superior method of fairly and efficiently adjudicating this Action.

8. Under Federal Rule of Civil Procedure 23, and for settlement purposes only. Plaintiff Dale Moog is hereby appointed Class Representative and the following are hereby appointed as Class Counsel: Allen Carney and Sam Jackson of Carney Bates & Pulliam PLLC, and Nicholas Johnson and James Kauffman of Bailey & Glasser, LLP.

9. The Court finds that the above attorneys are competent and capable of exercising the responsibilities of Class Counsel and that Plaintiff will adequately protect the interests of the Settlement Class defined above.

#### **NOTICE AND ADMINISTRATION**

10. The Court directs the Settlement Administrator to perform the functions and duties set forth in the Settlement Agreement—including providing notice to the Settlement Class, processing Claim Forms, and administering distributions from the Settlement Fund—and to provide such other administration services as are reasonably necessary to facilitate the completion of the Settlement.

11. The Court has carefully considered the forms and methods of notice to the Settlement Class set forth in the Settlement ("Notice Program"). The Court finds that the Notice Program is reasonably calculated to apprise members of the Settlement Class of the pendency of this action, the terms of the Settlement, and the right to object to the Settlement and to exclude themselves from the Settlement Class. The Court finds that the Notice Program constitutes the best notice practicable under the circumstances and fully satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the requirements of due process, and the requirements of any other applicable law, such that the terms of the Settlement, the releases provided for therein, and

this Court's final judgment will be binding on all Settlement Class Members. The Court further finds that the Notice Program constitutes valid, due, and sufficient notice to all persons entitled thereto, and meets the requirements of due process. Accordingly, the Court finds that no notice other than that specifically identified in the Settlement is necessary in this Action.

12. The Court hereby approves the Notice Program and the form, content, and requirements of the E-mail Notice attached as Exhibit B to the Settlement, the Long Form Notice attached as Exhibit C to the Settlement, and the Claim Form attached as Exhibit D to the Settlement. The Parties, by agreement, may revise the Notices and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting, consistent with this Order.

13. The Settlement Administrator shall cause the Notice Program to be executed within forty-five (45) days following the entry of this Order (the "Notice Date"). Class Counsel, prior to the Final Approval Hearing, shall file with the Court a declaration executed by the Settlement Administrator attesting to the timely completion of the Notice Program. The Settlement Administrator shall maintain the Settlement Website to provide full information about the Settlement and allow for the filing of claims online.

#### **SUBMISSION OF CLAIMS AND REQUESTS FOR EXCLUSIONS**

14. Settlement Class Members who wish to receive benefits under the Settlement must complete and submit a timely and valid Claim Form in accordance with the instructions contained therein. To be timely, Claim Forms must be postmarked or received by the Settlement Administrator by \_\_\_\_\_, 20\_\_\_. Settlement Class Members who do not submit a claim and those who do not submit a timely and valid claim will not receive a payment under the Settlement, but they will be bound by the Settlement.

15. The Settlement Administrator shall review all claims to determine their validity and shall employ reasonable procedures to screen claims for abuse and fraud, and to deny claims where there is evidence of abuse or fraud. The Settlement Administrator may reject any claim that is not submitted by a Settlement Class Member; that does not comply in any material respect with the instructions on the Claim Form; or that is submitted after the Claims Deadline.

16. Each and every member of the Settlement Class who does not timely and validly submit a claim shall be forever barred from participating in any distributions of the Settlement Fund, and shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement, unless such person requests exclusion from the Settlement in a timely and proper manner, as hereinafter provided.

17. A member of the Settlement Class wishing to request exclusion (or “opt-out”) from the Settlement shall mail a request for exclusion to the Settlement Administrator. The request for exclusion must be in writing, must be mailed to the Settlement Administrator at the address specified in the Class Notice, must be postmarked no later than forty-five (45) days following the Notice Date, must include the name and number of the case, and must clearly state the Settlement Class Member’s desire to be excluded from the Settlement Class, as well as the Settlement Class Member’s name, address, and signature. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above. No member of the Settlement Class, or any person acting on behalf of or in concert or in participation with a member of the Settlement Class, may request exclusion of any other member of the Settlement Class from the Settlement.

18. Members of the Settlement Class who timely request exclusion from the Settlement will relinquish their rights to benefits under the Settlement and will not release any claims against

CBN.

19. All members of the Settlement Class who do not timely and validly request exclusion shall be bound by all terms of the Settlement Agreement and by the Final Approval Order and Judgment even if they have previously initiated or subsequently initiate individual litigation or any other proceedings against CBN.

20. The Settlement Administrator shall promptly provide all Parties with copies of any exclusion requests, and Plaintiff shall file a list of all persons who have validly opted out of the Settlement with the Court prior to the Final Approval Hearing.

### **APPEARANCES AND OBJECTIONS**

21. Any member of the Settlement Class who does not file a timely request for exclusion, but who wishes to object to approval of the proposed Settlement, to the award of attorneys' fees and costs, or to the Service Award to the Class Representative must file with the Court a written statement (along with any supporting papers), postmarked or filed on or before 45 days following the Notice Date, that includes: a caption or title that identifies it as "Objection to Class Settlement in *Moog v. The Christian Broadcasting Network, Inc.*, Case No. 1:24-cv-00501"; the Settlement Class Member's name and address; all grounds for the objection, including all citations to legal authority and evidence supporting the objection; the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"); a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules); a list of all class action settlements to which the objector has lodged an objection in the last five years; and the objector's handwritten

or electronically imaged written signature.

22. If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received. Any challenge to the Settlement Agreement or the Final Approval Order and Judgment shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

23. A Settlement Class Member who has timely filed a written objection stating the Settlement Class Member's intention to appear at the Final Approval Hearing as set forth above may appear at the Final Approval Hearing in person or through counsel to be heard orally regarding his or her objection. It is not necessary, however, for a Settlement Class Member who has filed a timely objection to appear at the Final Approval Hearing. No Settlement Class Member wishing to be heard orally in opposition to the approval of the Settlement and/or the request for attorneys' fees and costs and/or the request for Service Award to the Class Representative will be heard unless that Settlement Class Member has filed a timely written objection as set forth above, including a statement that the Settlement Class Member intends to appear at the Final Approval Hearing. No non-party, including members of the Settlement Class who have timely opted out of the Settlement, will be heard at the Final Approval Hearing.

24. Any Settlement Class Member who does not make an objection to the Settlement in the manner provided herein shall be deemed to have waived and forfeited any and all rights he or she may have to object, appear, present witness testimony, and/or submit evidence; shall be barred from appearing, speaking, or introducing any testimony or evidence at the Final Approval

Hearing; shall be precluded from seeking review of the Settlement by appeal or other means; and shall be bound by all terms of the Settlement and by all proceedings, orders, and judgments in the Action.

### **FINAL APPROVAL HEARING**

25. The Federal Rule of Civil Procedure 23(e) Final Approval Hearing is hereby scheduled to be held before this Court on \_\_\_\_\_, 20\_\_ for the following purposes: (i) to finally determine whether the applicable prerequisites for settlement class action treatment under Federal Rules of Civil Procedure 23(a) and (b)(3) are met; (ii) to determine whether the Settlement is fair, reasonable, and adequate, and should be given final approval by the Court; (iii) to determine whether the judgment as provided under the Settlement Agreement should be entered; (iv) to consider the application for an award of attorneys' fees and expenses of Class Counsel; (v) to consider the application for a Service Award to the Class Representative; (vi) to consider the distribution of the Settlement benefits under the terms of the Settlement Agreement; and (vii) to rule upon such other matters as the Court may deem appropriate.

26. On or before thirty (30) days after the Notice Date, Class Counsel shall file any application for attorneys' fees and expenses and Service Award to the Class Representative (the "Fee Petition"). Defendant may, but is not required to, file a response to Class Counsel's Fee Petition with the Court no later than twenty-one (21) days before the Final Approval Hearing. Class Counsel may file a reply in support of their Fee Petition with the Court no later than fourteen (14) days before the Final Approval Hearing.

27. On or before thirty (30) days after the Notice Date, Plaintiff shall file papers in support of final approval of the settlement. Papers in response to any objections shall be filed no later than fourteen (14) days before the Final Approval Hearing.

28. The Final Approval Hearing may be postponed, adjourned, transferred, or continued by order of the Court without further notice to the Settlement Class. At, or following, the Final Approval Hearing, the Court may enter a Final Approval Order and Judgment in accordance with the Settlement Agreement that will adjudicate the rights of all class members.

29. For clarity, the deadlines the Parties and members of the Settlement Class shall adhere to are as follows:

EVENT	DATE
Notice Date	45 days after Preliminary Approval
Class Counsel's Fee Petition	30 days after the Notice Date
Plaintiff's Motion for Final Approval	30 days after the Notice Date
Claims Deadline	45 days after the Notice Date
Objection/Exclusion Deadline	45 days after the Notice Date
Final Approval Hearing	120 days after the Notice Date

30. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

#### **FURTHER MATTERS**

31. All discovery and other pretrial proceedings in the Action as between the Plaintiff and CBN are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement and this Order.

32. In order to protect its jurisdiction to consider the fairness of the Settlement and to enter a Final Approval Order and Judgment having binding effect on all Settlement Class

Members, the Court hereby enjoins all members of the Settlement Class, and anyone who acts or purports to act on their behalf, from pursuing or continuing to pursue all other proceedings in any state or federal court or any other proceeding that seeks to address Releasing Parties' or any Settlement Class Member's rights or claims relating to, or arising out of, any of the Released Claims.

33. The Settlement does not constitute an admission, concession, or indication by the Parties of the validity of any claims or defenses in the Action or of any liability, fault, or wrongdoing of any kind by CBN, which vigorously denies all of the claims and allegations raised in the Action.

34. In the event that the Settlement is terminated under the terms of the Settlement, or if for any reason whatsoever the approval of it does not become final and no longer subject to appeal, then: (i) the Settlement shall be null and void, including any provisions related to the award of attorneys' fees and costs, shall have no further force and effect with respect to any party in this Action, and may not be referred to or used as evidence or for any other purpose whatsoever in the Action or any other action or proceeding; (ii) all negotiations, proceedings, documents prepared, and statements made in connection therewith shall be without prejudice to any person or party hereto, shall not be deemed or construed to be an admission by any party of any act, matter, or proposition, and shall not be used in any manner of or for any purpose in any subsequent proceeding in this Action or in any other action in any court or other proceeding, provided, however, that the termination of the Settlement shall not shield from subsequent discovery any factual information provided in connection with the negotiation of this Settlement that would ordinarily be discoverable but for the attempted settlement; (iii) this Order shall be vacated and of no further force or effect whatsoever, as if it had never been entered; and (iv) any party may elect



to move the Court to implement the provisions of this paragraph, and none of the non-moving parties (or their counsel) shall oppose any such motion. This Order shall not be construed or used to show that certification of one or more classes would or would not be appropriate if the Action were to be litigated rather than settled.

35. The Court retains Jurisdiction to consider all further matters arising out of or connected with the Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
HON. PATRICIA TOLLIVER GILES  
UNITED STATES DISTRICT COURT  
JUDGE

Approved as to form:



By: \_\_\_\_\_  
Allen Carney (admitted pro hac vice)  
CARNEY BATES & PULLIAM, PLLC  
1 Allied Drive, Ste 1400  
Little Rock, AR 72202  
Telephone: (501) 312-8500  
Facsimile: (501) 312-8505  
Email: [acarney@cbplaw.com](mailto:acarney@cbplaw.com)

Counsel for Plaintiff

By: \_\_\_\_\_  
Michael Jervis (admitted pro hac vice)  
MULLEN COUGHLIN, LLC  
426 W. Lancaster Ave., Ste. 200  
Devon, PA 19333  
Telephone: (267) 930-4498  
Facsimile: (267) 930-4771

Email: [mjervis@mullen.law](mailto:mjervis@mullen.law)

Counsel for Defendant

to move the Court to implement the provisions of this paragraph, and none of the non-moving parties (or their counsel) shall oppose any such motion. This Order shall not be construed or used to show that certification of one or more classes would or would not be appropriate if the Action were to be litigated rather than settled.

35. The Court retains Jurisdiction to consider all further matters arising out of or connected with the Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
HON. PATRICIA TOLLIVER GILES  
UNITED STATES DISTRICT COURT  
JUDGE

Approved as to form:

By: \_\_\_\_\_  
Allen Carney (admitted pro hac vice)  
CARNEY BATES & PULLIAM, PLLC  
1 Allied Drive, Ste 1400  
Little Rock, AR 72202  
Telephone: (501) 312-8500  
Facsimile: (501) 312-8505  
Email: [acarney@cbplaw.com](mailto:acarney@cbplaw.com)

Counsel for Plaintiff

By: \_\_\_\_\_  
Michael Jervis (admitted pro hac vice)  
MULLEN COUGHLIN, LLC  
426 W. Lancaster Ave., Ste. 200  
Devon, PA 19333  
Telephone: (267) 930-4498  
Facsimile: (267) 930-4771  
Email: [mjervis@mullen.law](mailto:mjervis@mullen.law)

**TO:**  
**FROM:**  
**RE:** Legal Notice of Class Action Settlement

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**  
*Dale Moog v. The Christian Broadcasting Network, Inc., No. 1:24-CV-00501, EDVA*

**(United States District Court for the Eastern District of Virginia)**

**Our Records Indicate You May Be Entitled to a Payment From a Class Action Settlement  
Because You had a login to The Christian Broadcasting Network, Inc. Website**

Click [**HERE**] To File a Claim for Payment

Claims Must be Submitted no later than [**Claims Deadline**]

*A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.*

This notice is to inform you that a settlement has been reached in a class action lawsuit against Defendant The Christian Broadcasting Network, Inc. (“CBN” or “Defendant”). The class action lawsuit alleges that, from March 28, 2022 through May 28, 2024, CBN disclosed the personally identifiable information (“PII”) of those individuals with a CBN login (such PII being more specifically described as that individual’s Facebook ID) to Meta (i.e., Facebook) via the Meta Pixel in violation of the Video Privacy Protection Act (“VPPA”). The VPPA defines PII to include information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider (i.e., a video tape service provider is defined as any person, engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audio-visual materials). CBN denies that it violated any law but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.

**Am I a Class Member?** Our records indicate you may be a Settlement Class Member. Settlement Class Members are all persons in the United States who: (1) possessed and used login credentials for any of CBN’s websites, and (2) requested or obtained video content from and/or through any of CBN’s services from March 28, 2022, to and through May 28, 2024.

**What Can I Get?** If approved by the Court, CBN will create a Settlement Fund of **\$4,000,000.00** for the benefit of the Settlement Class. The Settlement Fund will be distributed to Settlement Class Members who file a timely and complete claim on a *pro rata* basis, after deducting any Court-approved attorneys’ fees and expenses, service award for the class representative, and costs of settlement administration.

The Settlement also requires CBN to suspend operation of the Meta Pixel on any pages on its website that both include video content and have a URL that identifies the video content requested or obtained, unless and until the same is authorized or permitted by law, and/or the VPPA is: (a) amended to expressly permit (and not prohibit) the Released Claims, (b) repealed, or (c) invalidated by a judicial

If you do not want emails about this matter, please unsubscribe [\_\_\_\_\_].

decision on the use of website pixel technology by the United States Supreme Court or the Fourth Circuit Court of Appeals. Nothing about this provision prevents CBN from seeking to obtain VPPA-compliant consent in the future should it wish to reinstitute use of the Meta Pixel. Likewise, nothing herein shall prohibit the use by CBN of the Meta Pixel where the disclosure of information does not identify specific video materials that a user has requested or obtained, or to engage in the use of other technology that does not violate the VPPA, or has been consented to by the user.

**How Do I Get a Payment?** You must submit a timely and complete Claim Form **no later than [claims deadline]**. You can file a claim by clicking [here.] Your payment will come by check unless you elect to receive payment electronically by Venmo, CashApp, Zelle, PayPal, etc.

**What are My Other Options?** You may exclude yourself from the Settlement Class by sending a letter to the settlement administrator no later than [objection/exclusion deadline]. If you exclude yourself, you cannot get a settlement payment, but you will keep any rights you may have to sue CBN regarding the issues in the lawsuit. Alternatively, if you remain in the Settlement Class, you may object to the proposed Settlement, and you and/or your lawyer have the right to appear before the Court. Your written objection must be filed no later than [objection/exclusion deadline]. Specific instructions about how to exclude yourself from, or object to, the Settlement are available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). If you file a claim or do nothing, and the Court approves the Settlement, you will be bound by all of the Court's orders and judgments. In addition, your claims against CBN relating to issues in this case will be released.

**Who Represents Me?** The Court has appointed Allen Carney and Sam Jackson of Carney Bates & Pulliam PLLC, and Nicholas Johnson and James Kauffman of Bailey & Glasser, LLP to represent the Settlement Class. These attorneys are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at \_\_\_\_m. on [date] in Courtroom \_\_\_\_ at the Albert V. Bryan U.S. Courthouse, 401 Courthouse Square, Alexandria, VA 22314. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider Class Counsel's request for attorneys' fees and expenses; and to consider the request for a Service Award to the Class Representative. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement.

**How Do I Get More Information?** This notice contains only a summary of the Settlement and the proceedings to date. Complete copies of public pleadings, Court rulings, and other filings are available for review and copying at the office of the Clerk of the Court for the United States District Court for the Eastern District of Virginia, 401 Courthouse Square, Alexandria, VA 22314 between 8:30 a.m. and 5:00 p.m. Monday through Friday, excluding Court holidays. Additional information is also available at the website maintained for this Action, [www.\\_\\_\\_\\_\\_.com](http://www._____.com), or by contacting the Settlement Administrator at **XXX-XXX-XXXX** or Class Counsel at **XXX-XXX-XXXX**.

**PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, DEFENDANT, OR DEFENDANT'S COUNSEL TO ASK QUESTIONS ABOUT THIS ACTION OR THIS NOTICE. THEY CANNOT ANSWER ANY QUESTIONS OR DISCUSS THE ACTION.**

If you do not want emails about this matter, please unsubscribe [\_\_\_\_\_].

United States District Court for the Eastern District of Virginia  
Moog v. The Christian Broadcasting Network, Inc., Case No. 1:24-cv-00501

## Records Indicate You May Be Entitled to a Payment From a Class Action Settlement Because You had a Login to The Christian Broadcasting Network, Inc. Website

Claims Must be Submitted no later than [Claims Deadline]

A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit against Defendant The Christian Broadcasting Network, Inc. (“CBN” or “Defendant”). The class action lawsuit alleges that, from March 28, 2022 through May 28, 2024, CBN disclosed the personally identifiable information (“PII”) of those individuals with a CBN login (such PII being more specifically described as that individual’s Facebook ID) to Meta (i.e., Facebook) via the Meta Pixel in violation of the Video Privacy Protection Act (“VPPA”). The VPPA defines PII to include information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider (i.e., a video tape service provider is defined as any person, engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials). CBN denies that it violated any law but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.
- You are included in the Settlement Class if you are a person in the United States who, from March 28, 2022, to and through May 28, 2024, possessed and used login credentials for any of CBN’s websites, and requested or obtained video content from and/or through any of CBN’s Services.

Persons included in the Settlement will be eligible to receive a cash payment *pro rata* (meaning equal) portion of the Net Settlement Fund. The Settlement also requires Defendant to suspend operation of the Meta Pixel on any pages on its website that both include video content and have a URL that identifies the video content requested or obtained, unless and until the same is authorized or permitted by law, and/or the VPPA is: (a) amended to expressly permit (and not prohibit) the Released Claims, (b) repealed, or (c) invalidated by a judicial decision on the use of website pixel technology by the United States Supreme Court or the Fourth Circuit Court of Appeals.

- Read this Notice carefully. It explains your rights and options—**and the deadlines to exercise them**. Your legal rights are affected whether you act, or do not act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>SUBMIT A CLAIM FORM BY [DATE]</b>	This is the only way to receive a payment. Claim Forms can be found and submitted by clicking <a href="#">here</a> . As a member of the Settlement Class, you will give up your rights to sue CBN in the future regarding the claims in this case.
<b>EXCLUDE YOURSELF BY [DATE]</b>	You will receive no benefits, but you will retain any rights you currently have to sue CBN regarding the claims in this case.

<b>OBJECT BY [DATE]</b>	Write to the Court explaining why you don't like the Settlement.
<b>GO TO THE HEARING ON [DATE]</b>	Ask to speak in Court about your opinion of the Settlement.
<b>DO NOTHING</b>	You won't get a share of the Settlement benefits and will give up your rights to sue CBN regarding the claims in this case.

## BASIC INFORMATION

### 1. Why was this Notice issued?

A Court authorized this notice because you have a right to know about a proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

The Honorable Patricia Tolliver Giles of the U.S. District Court for the Eastern District of Virginia is overseeing this case. The case is called *Moog v. The Christian Broadcasting Network, Inc.*, Case No. 1:24-cv-00501. The person who has sued is called the Plaintiff. The entity being sued, CBN, is called the Defendant.

### 2. What is a class action?

In a class action, one or more people called the class representatives (in this case, Plaintiff Dale Moog) sue on behalf of a group or a “class” of people who have similar claims. In a class action, the court resolves the issues for all class members, except for those who exclude themselves from the class.

### 3. What is this lawsuit about?

This lawsuit claims that CBN violated the Video Privacy Protection Act, 18 U.S.C. § 2710, *et seq.* (“VPPA”). More specifically, Plaintiff alleges that Defendant’s alleged disclosure of Plaintiff’s Facebook ID, which he alleges describes his personally identifiable information (“PII”), as defined under the VPPA, to Meta Platforms, Inc. (formerly known as Facebook) (“Meta”) without informed, written consent by installing the Meta Pixel<sup>1</sup> on its websites, which Plaintiff alleges constituted knowing disclosure to a third party as required by the VPPA. Plaintiff further alleges that he created a free login on Defendant’s webpage by providing a screen name, creating his personal password for the site and providing his email address. Plaintiff alleges that this free login procedure constitutes a subscription under the VPPA. Defendant denies any and all alleged wrongdoing. Defendant contends that Plaintiff has never revealed his Facebook ID to Defendant, and Defendant did not know and does not know Plaintiff’s Facebook ID, or if Plaintiff has a Facebook account or a Facebook ID, or if Plaintiff has allowed Facebook to track his internet activities.

### 4. Why is there a Settlement?

The Court has not decided whether the Plaintiff or CBN should win this case. Instead, both sides agreed to a Settlement. That way, they avoid the uncertainties and expenses associated with ongoing litigation, and Settlement Class Members will get compensation.

## WHO’S INCLUDED IN THE SETTLEMENT?

### 5. How do I know if I am in the Class?

The Settlement Class is defined as:

All persons in the United States who: (1) possessed and used login credentials for any of CBN’s

<sup>1</sup> The “Meta Pixel” is a piece of code that can be embedded in a website to track user interactions such as pages visited, and to report that information back to Meta (formerly known as Facebook).



websites, and (2) requested or obtained video content from and/or through any of CBN's Services during the period from March 28, 2022, to and through May 28, 2024.

## SETTLEMENT BENEFITS

### 6. What does the Settlement provide?

**Monetary Relief:** CBN will pay \$4,000,000.00 to create a Settlement Fund.

**Prospective Changes:** In addition to this monetary relief, the Settlement also requires CBN will suspend operation of the Meta Pixel on any pages on its website that both include video content and have a URL that identifies the video content requested or obtained, unless and until the same is authorized or permitted by law, and/or the VPPA is: (a) amended to expressly permit (and not prohibit) the Released Claims, (b) repealed, or (c) invalidated by a judicial decision on the use of website pixel technology by the United States Supreme Court or the Fourth Circuit Court of Appeals. Nothing about this provision prevents CBN from seeking to obtain VPPA-compliant consent in the future should it wish to reinstitute use of the Meta Pixel. Likewise, nothing herein shall prohibit the use by CBN of the Meta Pixel where the disclosure of information does not identify specific video materials that a user has requested or obtained, or to engage in the use of other technology that does not violate the VPPA, or has been consented to by the user.

A detailed description of the settlement benefits can be found in the Settlement Agreement, available on the Settlement Website [www.xxxxxxxxxxxxxxxxxx.com](http://www.xxxxxxxxxxxxxxxxxx.com).

### 7. How much will my payment be?

After deducting any Court-approved attorneys' fees and expenses, service award for the class representative, and costs of settlement administration, the Settlement Fund will be distributed to Settlement Class Members on a *pro rata* basis. This means each Settlement Class Member who submits a valid claim will be paid an equal share from the Net Settlement Fund. The amount of the payments to individual Class Members will depend on the number of valid claims that are filed. Because the final payment amount cannot be calculated before all claims are received and verified, it will not be possible to provide an accurate estimate of the payment amount before the deadline to file claims.

### 8. When will I get my payment?

The Court will hold a hearing to consider the fairness of the Settlement on [Final Approval Hearing Date]. If the Court approves the Settlement, eligible Settlement Class Members whose claims were approved by the Settlement Administrator will receive their payment within 90 days after the Settlement has been finally approved and/or any appeals process is complete. In submitting their claims, Class Members can choose whether to receive their payment via Venmo, CashApp, Zelle, PayPal, or paper check. All checks will expire and become void unless cashed within 180 days after the date of issuance.

## HOW TO GET BENEFITS

### 9. How do I get a payment?

1-800-000-0000

[www.xxxxxxxxxxxxxxxxxx.com](http://www.xxxxxxxxxxxxxxxxxx.com)

If you are a Settlement Class Member and you want to receive a payment, you **must** complete and submit a Claim Form by [**Claims Deadline**]. Claim Forms can be found and submitted at the Settlement Website, [www.xxxxxxxxxxxxxxxxxx.com](http://www.xxxxxxxxxxxxxxxxxx.com), or by printing and mailing a paper Claim Form, copies of which are available for download at the Settlement Website.

Settlement Class Members are encouraged to submit claims online.

## REMAINING IN THE SETTLEMENT

### 10. What am I giving up if I stay in the Settlement Class?

If the Settlement becomes final, you will give up (or “release”) your rights to sue CBN and certain of its affiliates (Released Parties) regarding the Released Claims, which are described and defined in Paragraphs 1.25 and 1.26 of the Settlement Agreement. Unless you exclude yourself (*see* Question 14), you will release the Released Claims, regardless of whether you submit a claim or not. You may access the Settlement Agreement through the “court documents” link on the website.

The Settlement Agreement describes the Released Claims with specific descriptions, so read it carefully. If you have any questions you may speak to the lawyers listed in Question 12 for free or you may, of course, speak to your own lawyer.

### 11. What happens if I do nothing at all?

If you do nothing, you will not receive any monetary benefit from this Settlement. Further, if you do not exclude yourself, you will be unable to start a lawsuit or be part of any other lawsuit brought against CBN regarding the Released Claims.

## THE LAWYERS REPRESENTING YOU

### 12. Do I have a lawyer in the case?

The Court has appointed Allen Carney and Sam Jackson of Carney Bates & Pulliam PLLC, and Nicholas Johnson and James Kauffman of Bailey & Glasser, LLP to be the attorneys representing the Settlement Class. They are called “Class Counsel.” After conducting an extensive investigation, they believe that the Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your own expense.

### 13. How will the lawyers be paid?

Class Counsel’s attorneys’ fees, costs, and expenses will be paid from the Settlement Fund in an amount determined and awarded by the Court. Class Counsel is entitled to seek up to one-third of the \$4 million Settlement Fund, but the Court may award less than this amount.

Class Counsel may also seek a Service Award of up to \$5,000.00 for the Class Representative for his service in helping to bring and settle the case. The Service Award will be paid out of the Settlement Fund, but the Court may award less than this amount.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

#### 14. How do I get out of the Settlement?

To exclude yourself from the Settlement Class, you must mail or otherwise deliver a letter stating that you wish to be excluded. Your letter must include:

- a. The name and number of this case, *Moog v. The Christian Broadcasting Network, Inc.*, Case No. 1:24-cv-00501;
- b. Your full name and mailing address;
- c. A statement that you wish to be excluded; and
- d. Your handwritten or electronically imaged written signature.

You must mail or deliver your exclusion letter, postmarked no later than **[objection/exclusion deadline]** to:

Settlement Administrator  
**[insert address]**

#### 15. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue CBN for the Released Claims being resolved by this Settlement.

#### 16. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, you may not submit a Claim Form to receive a monetary benefit.

### OBJECTING TO THE SETTLEMENT

#### 17. How do I object to the Settlement?

If you're a Settlement Class Member, you may ask the Court to deny approval by filing an objection. You may object to any aspect of the Settlement, Class Counsel's request for attorneys' fees and expenses, or the request for a Service Award. You can give reasons why you think the Court should not give its approval. The Court will consider your views.

If you choose to make an objection, you must mail or file with the Court a letter or brief stating that you object to the Settlement. Your letter or brief must include the name and number of this case, *Moog v. The Christian Broadcasting Network, Inc.*, Case No. 1:24-cv-00501, as well as the following information:

- a. Your full name and mailing address;
- b. An explanation of any and all of your reasons for your objections, including citations to legal authority and supporting evidence, and attaching any materials you rely on for your objections;
- c. The name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with your objection;
- d. A statement indicating whether you or your attorney intends to appear at the Final Approval Hearing;

- e. A list of all class action settlements to which you have lodged an objection in the last five years;
- f. Your handwritten or electronically imaged written signature; and
- g. If a Settlement Class Member or any of the objecting lawyers have objected to any class action settlement where the objector or the objecting lawyer asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received. Any challenge to the Settlement Agreement or the Final Judgment shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

You must mail or deliver your written objection, postmarked no later than **[objection/exclusion deadline]** to:

Clerk of the Court  
 United States District Court for the Eastern District of Virginia  
 401 Courthouse Square, Alexandria,  
 VA 22314

You must also mail or otherwise deliver a copy of your written objection to Class Counsel and CBN’s Counsel at the following addresses:

Class Counsel	CBN’s Counsel
Allen Carney Carney Bates & Pulliam, PLLC One Allied Dr., Ste. 1400 Little Rock, AR 72202 Email: acarney@cbplaw.com	Michael W. Jervis Mullen Coughlin 426 W. Lancaster Ave., Ste. 200 Devon, PA 19333 Email: mjervis@mullen.law

**18. What’s the difference between objecting and excluding myself from the Settlement?**

Objecting simply means telling the Court that you don’t like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class is telling the Court that you don’t want to be part of the Settlement Class. If you exclude yourself, you have no right to object or file a Claim Form because the case no longer affects you.

**THE COURT’S FINAL APPROVAL HEARING**

**19. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at **[time]** on **[date]** in Courtroom \_\_ at the Albert V. Bryan U.S. Courthouse, 401 Courthouse Square, Alexandria, VA 22314. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Class; to consider Class Counsel’s request for attorneys’ fees and

expenses; and to consider the request for a Service Award to the Class Representative. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check [Settlement Website] or call [class counsel contact]. If, however, you timely objected to the Settlement and advised the Court that you intend to appear and speak at the Final Approval Hearing, you will receive notice of any change in the date of such Final Approval Hearing.

#### **20. Do I have to attend the hearing?**

No. Class Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you send an objection or comment, you don't have to attend the hearing to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also retain your own lawyer (at your own expense) to attend, but it's not required.

#### **21. May I speak at the hearing?**

Yes. You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include in your letter or brief objecting to the Settlement a statement saying that your or your attorney intend to appear at the Final Approval Hearing.

### **GETTING MORE INFORMATION**

#### **22. Where do I get more information?**

This Notice contains only a summary of the Settlement and the proceedings to date. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at [Settlement Website]. You may also write with questions to the Settlement Administrator, [Insert address]. You can also call the Settlement Administrator at 1-XXX-XXX-XXXX or Class Counsel at [class counsel contact], if you have any questions. Before doing so, however, please read this full Notice carefully. You may also find additional information elsewhere on the case website.

**PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, DEFENDANT, OR DEFENDANT'S COUNSEL TO ASK QUESTIONS ABOUT THIS ACTION OR THIS NOTICE. THEY CANNOT ANSWER ANY QUESTIONS OR DISCUSS THE ACTION.**



